

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

105 OFFICE COPY
TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia.

APRIL TERM, 1922.

No. 3828. 902

**SUPREME LODGE KNIGHTS OF PYTHIAS, A
CORPORATION, APPELLANT,**

vs.

CATHRINE WOOD.

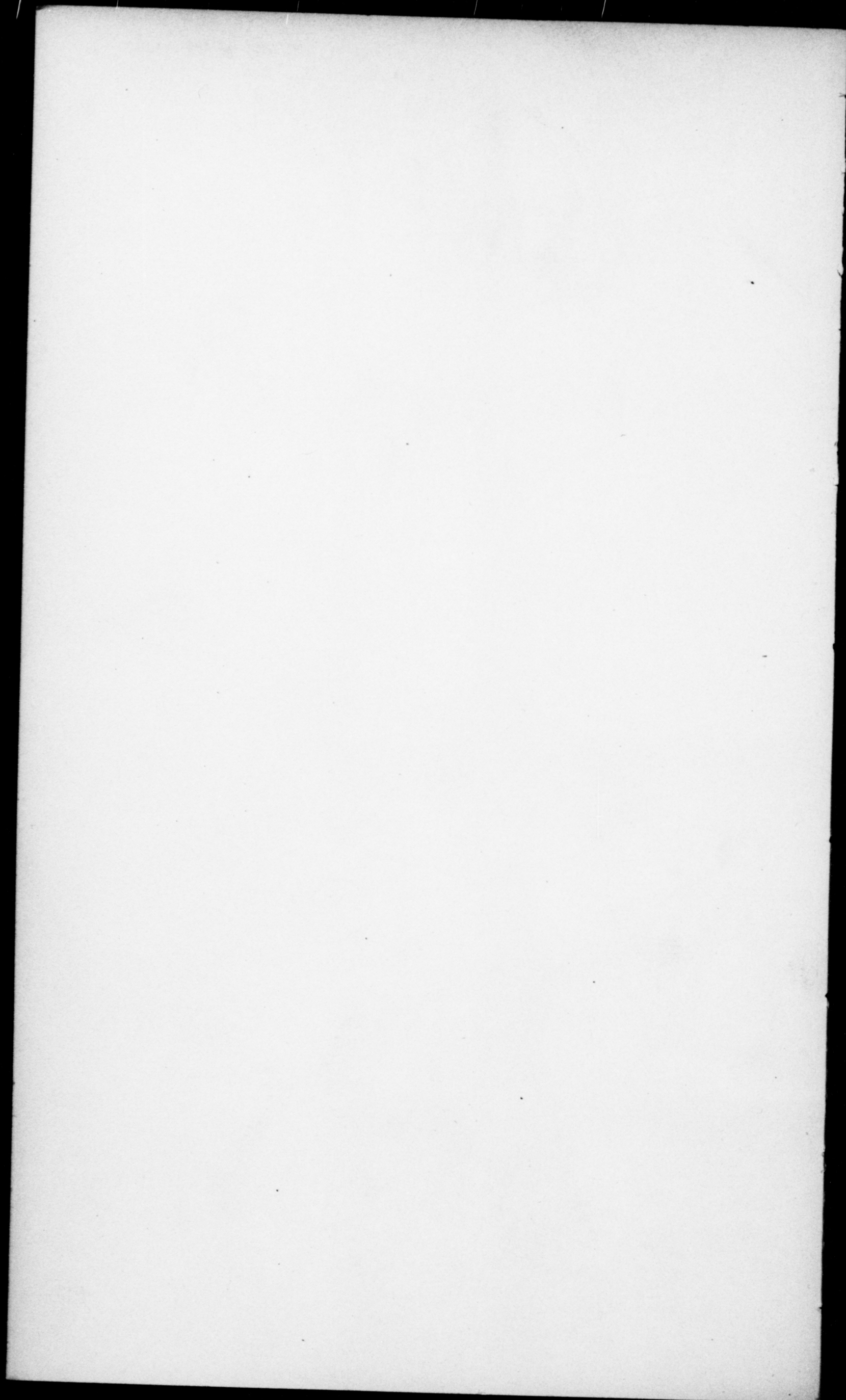
**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.**

FILED JUNE 5, 1922.

PRINTED JULY 12, 1922.

LIBRARY

**THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK**



Court of Appeals of the District of Columbia.

APRIL TERM, 1922.

No. 3828.

SUPREME LODGE KNIGHTS OF PYTHIAS, A
CORPORATION, APPELLANT,

vs.

CATHRINE WOOD, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

INDEX.

	Original.	Print.
Caption	<i>a</i>	1
Declaration	1	1
Particulars of demand.....	3	3
Affidavit of Cathrine Wood.....	3	3
Demurrer; note.....	14	13
Pleas	16	15
Affidavit of W. O. Powers.....	17	15
Opinion of court.....	21	17
Joinder of issue.....	25	20
Replication to fifth plea.....	26	21
Joinder in issue upon replication to fifth plea.....	26	21
Memoranda: Jury sworn and respited; verdict for defendant on first count of declaration and for plaintiff on second count for \$2,362.34.....	26	21
Motion to set aside verdict and for a new trial.....	27	21
Memorandum: Remittitur of \$840.44 filed.....	28	23

	Original.	Print.
Motion for new trial overruled; judgment on verdict ordered; judgment; appeal noted.....	29	23
Memoranda: Supersedeas (\$2,500) undertaking on appeal ap- proved and filed; time to submit bill of exceptions extended; bill of exceptions submitted.....	29	23
Order making bill of exceptions part of record.....	30	23
Assignment of errors.....	30	24
Designation of record.....	31	24
Docket entries.....	33	25
Clerk's certificate.....	35	27
Bill of exceptions.....	36	27
Testimony of Katherine Wood.....	37	28
Mary Elizabeth Evans.....	48	35
John M. Kline.....	52	38
Walter C. Powers.....	64	46
Plaintiff's prayer.....	74	52
Defendant's prayers.....	75	52
Court's instruction to jury.....	80	56
Exhibits	86	59

Court of Appeals of the District of Columbia.

No. 3828.

SUPREME LODGE KNIGHTS OF PYTHIAS, a Corporation, Appellants,

vs.

CATHRINE WOOD.

a Supreme Court of the District of Columbia.

Law. No. 59119.

CATHRINE WOOD, Plaintiff,

vs.

SUPREME LODGE KNIGHTS OF PYTHIAS, a Corporation, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1

Declaration.

Filed May 4, 1916. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

Law. No. 59119.

CATHRINE WOOD, Plaintiff,

vs.

SUPREME LODGE KNIGHTS OF PYTHIAS, a Corporation, Defendant.

First Count. The plaintiff, Cathrine Wood, sues the defendant, the Supreme Lodge, Knights of Pythias, a corporation, incorporated under and by virtue of the laws of the Dist. of Columbia, for that whereas, heretofore, to wit, on the 1st day of February, 1909, the said defendant which was then a corporation as aforesaid, doing the

business of life insurance in the City of Washington, District of Columbia, and had, and still has an office and agent in the District of Columbia, in consideration of a certain monthly premium hereinafter to be paid by the said insured to the said defendant, and in consideration of the further condition that after said monthly payments had been made for three years that said insurance company would carry said insurance for an additional year without any further payment of premiums, and which said monthly premiums were paid for three years by the said insured to said defendant company in accordance with the terms and conditions of the policy of insurance, made this policy of insurance in writing upon the life of one William H. Wood, the husband of the plaintiff named herein, whereby the said defendant promised and agreed to pay to the said plaintiff, wife, as beneficiary named in said policy at the time of the death of the insured, the sum of \$2,000, during the continuance of said policy; that thereafter, to wit, on the 14th day of October,

2 ber, 1914, and during the continuance of said policy, all premiums having been paid, the said insured, William H. Wood departed this life in the City of Washington, District of Columbia; that due notice of death was given to the said defendant company, but the said defendant company refused to recognize the said insured as a member of said insurance company and declined to make any payment on account of said policy issued to him as aforesaid by the said defendant company, and thereupon, and by reason of said death and of the terms, agreements and conditions of said policy issued by said defendant as aforesaid, the said sum of \$2,000 became due and payable to the plaintiff in this suit as the beneficiary named in said policy.

And the said defendant in accordance with the terms, agreements and conditions in said policy of insurance became and was indebted to the said plaintiff in the sum of \$2,000, which said amount, or no portion thereof has been paid, although demand has been made for the payment of said sum to the damage of the plaintiff in the sum of \$2,000, with interest thereon from the 14th day of October, 1914, besides the costs of this suit.

Second Count. The plaintiff, Cathrine Wood, further sues the defendant, the Supreme Lodge, Knights of Pythias, a corporation, for money payable by the defendant to the plaintiff; for goods sold and delivered by the plaintiff to the defendant; for work done and material provided by the plaintiff to the defendant; for work done and material provided by the plaintiff for the defendant at its request; for money loaned by the plaintiff to the defendant; for money paid by the plaintiff to the defendant at its request; for money received by the defendant for the use of the plaintiff; for money found to be due from the plaintiff on account stated between them.

3 Wherefore the plaintiff brings this suit and claims the sum of \$2,000 from the said defendant, with interest thereon from the 14th day of October, 1914, according to the particulars of demand hereto annexed.

W. GWYNN GARDINER,
Attorney for Plaintiff.

Particulars of Demand.

To amount due on policy issued to William H. Wood, on the 1st day of February, A. D., 1909, by the defendant company, insuring his life in the sum of \$2,000 said policy being numbered 264,581, with interest on same from the 14th day of October, A. D., 1914.

W. GWYNN GARDINER,
Attorney for Plaintiff.

Affidavit.

DISTRICT OF COLUMBIA, ss:

Cathrine Wood, being first duly sworn, on oath deposes and says that she is the plaintiff in the suit to which this affidavit is attached, and the widow of William H. Wood, who departed this life in the City of Washington, District of Columbia, on the 14th day of October, 1914; that she was named as beneficiary, and is beneficiary in a certificate numbered 264,581, issued by the Supreme Lodge, Knights of Pythias, insuring the said William H. Wood, under date of the 1st day of February, 1909, for the sum of \$2,000.

Deponent says that on April 16, 1885, certificate #1658
4 in the defendant company was issued to the said William H. Wood by the said defendant company, and deponent is advised, and upon information and belief, avers that he was one of the charter members of said defendant company; that the said certificate issued as aforesaid insuring the said William H. Wood, was for the sum of \$2,000, and that this deponent was named as the beneficiary in said policy, as wife of the said insured; that the said certificate was delivered to him in the District of Columbia, where the first premium, and all subsequent premiums were paid.

Deponent further says that on or about latter part of 1908, the defendant corporation sought to change its methods of doing business from the old assessment plan to a definite specified monthly premium plan, on the basis of a life insurance company and separating the insurance feature from the fraternal & social part of the defendant organization; and that the said decedent and this deponent as the beneficiary under said certificate were advised by the secretary of the said defendant company, to wit, John M. Kline, (who resided in the District of Columbia, and still resides in said District) to deliver up said certificate and to accept in lieu thereof, a policy of insurance in the Fifth Class Plan "A" for the same sum, to wit, \$2,000, providing for a monthly payment of a premium of \$13.90, and upon the solicitation of the said secretary, they having full confidence in his honesty, integrity and good judgment, at his recommendation, and upon his further statement that upon the payment of this sum for three years that the insurance company of which he was secretary, the defendant insurance company, would carry the insurance for one year without any payment. In other words, to carry the in-

5 insurance for four years upon the payment of \$13.90 per month for thirty-six months, and upon this statement being put in writing by the secretary of said defendant company and delivered to this deponent and her husband, which said paper writing is still in the possession of this deponent, and reads as follows:

"After 3 years, the company will carry the insurance for 1 year, 360 days,

After 4 years 2 years 185 days.

" 5 " 2 " 340 " &c.

they accepted, on the 31st day of December, 1908, the new plan in lieu of the old plan and signed application for a new certificate in said defendant company as a substitute for original certificate, which said certificate was issued to the husband of this deponent as the insured, on the 1st day of February, 1909, said policy of insurance insuring the said insured, William H. Wood, in the sum of \$2,000, deponent being named as beneficiary in said certificate, and said certificate being as follows:

Fifth Class.

Plan "A."
T.

Certificate of Membership.

No. 264,581.

\$2,000.

The Supreme Lodge. K. P. Knights of Pythias.

Insurance Department.

First Monthly Payment Required for February.

This certifies That in consideration of the warranties, promises and agreements made in this application, for transfer from the Fourth Class to the Fifth Class, William H. Wood, has been accepted as a member of Plan "A" in the Fifth Class of the Insurance Department; and, relying upon said warranties, promises and agreements,

The Supreme Lodge Knights of Pythias promises to pay, at the head office of its Board of Control, unto Cathrine Wood, his wife, beneficiary of said member, subject to his right to change the beneficiary as hereinafter provided, the sum of Two Thousand Dollars upon the receipt and approval of satisfactory proofs of the fact and cause of the death of the said member while this Certificate is in full force, the amount of any indebtedness on account of this Certificate being first deducted therefrom, and upon the surrender of this Certificate;

Subject, however, to the following conditions which are expressly assented to by the member:

1. The contract evidenced hereby shall not begin until twelve o'clock of the date hereof, and then the Supreme Lodge Knights of

6 Pythias, called the Society, will not be liable unless the said member has actually made the first monthly payment required hereunder.

2. The charter, all the laws, rules and regulations of the Society governing the Insurance Department, now in force and as the same may be hereafter changed, altered, added to, amended and repealed, together with the said application for transfer and all applications and medical examinations previously made for the certificate surrendered by said application for transfer, and any subsequently made applications that may be accepted respecting this certificate, and this Certificate consisting of Pages One, Two and Three shall compose the contract between the member and the Society. A true copy of said Application for transfer is contained upon Page Three hereof; and a true copy of all applications previously made affecting the said Certificate surrendered with said application for transfer will be furnished to the member upon request.

3. The Supreme Lodge Knights of Pythias is incorporated, and is a fraternal beneficiary Society, and no officer or representative thereof or of any subordinate body thereof has any right or power by any statement, agreement, promise or manner of transacting business, to waive the provisions or requirements of the contract between the member and the Society, or the laws, rules and regulations of the Society.

4. The member shall not have any divisible interest in any of the funds and properties of the Society, and he shall not have, except as may be expressly provided in this Certificate, any lawful claim during his life time to any part thereof, nor the right to have any portion thereof applied to the maintenance of this certificate.

5. The benefit Certificate is issued and accepted by the parties in interest subject to all the provisions and conditions contained and referred to in the foregoing, and to the conditions, provisions and benefits contained on the 2nd and 3rd pages hereof, which are hereby made a part of this certificate; and all of the conditions and provisions of the contract between the member and the Society are to be deemed to be assented to and accepted without the necessity for the member's signature being affixed hereto.

In testimony whereof, witness, the signature- of the President and General Secretary, respectively, of the Insurance Department, and the seal thereof affixed at Chicago, Illinois, U. S. A., this first day of February, One Thousand Nine Hundred and Nine.

[SEAL.]

CARLOS S. HARDY,
General Secretary.
UNION B. HUNT,
President.

Page Two.

Conditions, Provisions and Benefits.

Monthly Payments and Occupation.

1st. The monthly payments required of the member under the contract are based upon his age at his nearest birthday to the date of his application, which is given as age 65, and his present occupation, warranted by him to be paver. Each monthly payment required hereunder herefor is \$13.90 of which \$13.18 will belong to the Mortuary Fund of the Fifth Class, and \$.72 will belong to the Expend Fund of the Insurance Department. Said monthly payments will be due and payable to Secretary of the Section to which the member belongs, without notice in advance, on the first day of each and every month. Failure to make any such payment on or before the twentieth day of the month for which the same is due shall, *ipso facto* from and after such date, forfeit this certificate, subject to the provisions contained in paragraph 7 hereof.

7 A member changing his occupation from that stated in this paragraph will be required to conform strictly with the laws and rules of the Society respecting same.

Assignment.

2nd. This certificate cannot be assigned without the consent of the Board of Control, and then only in accordance with the laws of the Society.

Change of Beneficiary.

3rd. The beneficiary or beneficiaries named in this Certificate have no vested interest in same, and the beneficiary or beneficiaries may be changed at any time, and as often as the member may desire, upon the laws respecting the change of beneficiaries being complied with. If there is a failure of designation of beneficiary hereunder the rule for such cases stated in the laws of the Society shall govern.

Incontestability.

4th. After this Certificate has been in full force thirty-six consecutive months (3 years) from the date hereof, it shall be incontestable, except for failure to pay the regular monthly payments or assessments, for cessation of membership in the order Knights of Pythias, for fraud or misrepresentation made or practiced on the part of the member at the time of securing membership, and except for violation of the laws of the Society with reference to changing to Hazardous Extra Hazardous or Prohibited Occupation.

Cancellation of Certificates.

5th. The Board of Control may annul any certificates held by a member which has been procured by misrepresentation or fraud, or whenever a member becomes addicted to habits or vices whereby his natural or life expectancy is or may be thereby shortened, or whenever it is discovered by the Board that a member has by some habit or vice already shortened his expectancy. But the Board's failure to act hereunder in any case shall not preclude or estop the Society from asserting any defense that it might have in the absence of this clause.

Reinstatement.

6th. Upon this Certificate becoming forfeited by reason of the member failing to make any payment required within the time required, the same may be reinstated, as is provided therefor by the laws of the Society.

Paid-up and Extended Insurance.

7th. After the member has made all payments required and paid all assessments for thirty-six consecutive months, he shall be entitled to surrender value as follows:

After deducting the surrender or withdrawal charge, prescribed by the Board of Control, from the reserve to the credit of this Certificate, according to the American Experience Table of Mortality, with interest at $3\frac{1}{2}$ per centum per annum, the balance shall be used as a net single premium (according to said table), for the purchase of paid-up insurance; or, at the option of the member, the insurance hereunder may be extended for its full face amount for such a period as the balance will purchase (according to the same standard and after having deducted said surrender or withdrawal charge), Provided, if any indebtedness against this Certificate is outstanding at the time of surrender or commutation, such indebtedness shall be deducted from the balance available for the purchase of paid-up or extended insurance; in the event of extended insurance being selected or accepted by the member the amount which would have been payable in the event of death shall be extended for the period which said balance (less any indebtedness and less said surrender or withdrawal charge), will purchase. If a member holding a lapsed certificate entitled to be commuted under this rule into a paid-up or extended insurance contract, makes no selection as between the two options within thirty days from the date of the lapse of said certificate, it shall be understood that the lapsed certificate shall be extended under the rule herein stated. See
8 "Paid-up and Extended Values" below, which illustration, however, is subject to the member being liable for additional assessments and readjustments. See paragraph 16.

At the end of any period of extension of this Certificate, this Certificate shall, *ipso facto*, terminate and be of no further force or effect.

Loss of Membership in Subordinate Lodge.

8th. Loss of membership in his Subordinate Lodge by the member holding this Certificate shall not operate to forfeit same if it has been commuted into a paid-up or extended contract in accordance with the provisions of Paragraph 7 hereof, but in such case the member shall be deemed a member of this Society, for the purpose of maintaining such certificate, until the expiration of the period of extended insurance, or the maturity of the paid-up certificate; and, further, if the member holding this Certificate shall, after making all payments required, and paying all assessments for thirty-six consecutive months hereunder, lose his membership in his Subordinate Lodge, then this Certificate shall, *ipso facto*, upon the occurring of such loss of membership, be commuted into a paid-up insurance or extended insurance contract, in accordance with Paragraph 7 hereof.

Paid-up and Extended Insurance Contracts Participate.

9th. If the annual accounting in the Fifth Class discloses a surplus over the required reserve, the paid-up and extended insurance contracts will participate and the proper proportion of said surplus will be used to purchase additional paid-up insurance or increase the period for the extended insurance over that provided in the tables below.

Benefit Exempt from Debt.

10th. The Benefit provided to be paid hereunder will not be liable for, nor be subject to be appropriated to, the payment of any debts against the estate of the member.

Death by Suicide, Use of Intoxicating Liquors, Narcotics, Opiates, in a Duel, at the Hands of Justice, or in Violation of Criminal Law.

11th. If the death of the member holding this Certificate results from suicide, either voluntary or involuntary, whether the member be sane or insane at the time, or if his death be caused or superinduced by the use of intoxicating liquors, narcotics or opiates, or in consequence of a duel, or at the hands of justice, or in violation or attempted violation of any criminal law, then the amount to be paid on this Certificate shall be a sum only in proportion to the whole amount thereof, as the member's matured life expectancy is to his entire expectancy at the date of this Certificate, the expectation of life based upon the American Experience Table of Mortality to govern.

The foregoing provision of this paragraph shall not apply to the member if at the time of his death this Certificate has been in full

force for thirty-six months consecutively immediately preceding his death.

Loans.

12th. The loan provisions of the laws governing this Certificate are available to the member, and information regarding same will be furnished upon request.

Copies of Laws.

13th. A true copy of the several charters of the Society and of the laws of the Society governing this Certificate in force at this time is delivered to the member coincident with the delivery to him of this Certificate, and the same is attached to this Certificate. Additional copies will be furnished upon request. Copies of amendments and changes when made will be mailed to the member at his last known mail address on the books of the Society, and are to be by him attached hereto.

Mailing Address.

14th. The member's mail address is as given in his application for this Certificate. No change of address will be valid, so far as this Certificate is concerned, until notice of such change has been received at the head office of the Board of Control.

9

Annual Accounting.

15th. On the last day of each calendar year, or as soon thereafter as practicable, an accounting will be made under this Certificate between the member and the Society, and a statement of such accounting will be furnished by mail to the member upon request. Such statement will show the reserve to the credit of this Certificate, the receipts under the Certificate for the year, and the cost of maintaining same and the surplus, if any, and the amount thereof, if any, passed to the credit of this Certificate, provided that this Certificate will not be entitled to participate in the distribution of any surplus unless it has been in force for one full year at the time of such accounting.

Regular and Extra Monthly Payments, Right of, Readjustment and Increase of Contribution.

16th. The member holding this Certificate shall make all monthly payments as they may be due from him, and also make any extra or special monthly payments required from him hereunder as called by the Board of Control. His rate of contribution hereunder may be changed, increased or adjusted at any time in accordance with the laws of this Society when deemed necessary to carry out the purposes of the Insurance Department. The provision of this paragraph shall also apply to any paid-up certificate that may be issued by reason of this Certificate, and also to this Certificate if it is commuted into an extended insurance contract.

Proofs of Death and Limitation.

17th. Proofs of death satisfactory to the Board of Control shall be furnished to it free of expense within one year from the date of death of the member and no action at law shall be maintained unless suit is commenced within two years from the death of the member.

Paid-up and Extended Values as Set Forth in Rule in Paragraph 7 Hereof.

If all monthly payments and assessments are paid for—		Paid-up certificate of—	Or extend the amount of this certificate for—	
			Years.	Days.
36 months	(3 years)	\$276	1	360
48 "	(4 "	372	2	185
60 "	(5 "	464	2	340
72 "	(6 "	552	3	104
84 "	(7 "	636	3	209
96 "	(8 "	714	3	294
108 "	(9 "	790	3	361
120 "	(10 "	862	4	50
132 "	(11 "	932	4	89
144 "	(12 "	998	4	112
156 "	(13 "	1064	4	121
168 "	(14 "	1126	4	119
180 "	(15 "	1186	4	107
192 "	(16 "	1242	4	84
204 "	(17 "	1298	4	49
216 "	(18 "	1350	3	364
228 "	(19 "	1402	3	311
240 "	(20 "	1452	3	249

An extension of the above table beyond 240 months (20 years) will be computed on the same basis and will be furnished to the member upon request. The values shown in the above tables are for complete years; the surrender value for intermediate months are proportional.

The Supreme Lodge Knights of Pythias, Insurance Department Application for Transfer to Fifth Class.

To the Board of Control:

The undersigned applies for transfer from the Fourth to the Fifth Class of the Insurance Department of The Supreme Lodge Knights of Pythias, and warrants the following:

That I was born on the 15th day of March, A. D., 1844, that I am a member in good standing of Section No. 6 and of a Subordinate Lodge, Knights of Pythias. My present occupation or employment is Paver and my occupation or employment for the last five years has been Same. I attach and surrender Certificate No. 1658 dated Apr. 16, 1885, for Two Thousand Dollars for the purpose of having same cancelled upon the issuance to me of a certificate or certificates in lieu thereof, in accordance with this application. The warranties, statement and agreements binding upon me under said surrendered certificate, except in so far as they are modified by this application or the laws now in force governing the Insurance Department, are to be considered as here repeated, and shall enter into and become a part of the contract to be evidenced by the certificate or certificates applied for when issued.

I direct that a certificate or certificates be issued to me upon the plans and payable as hereinafter designated, to wit:

1. On Plan A \$2,000.00, payable to Catherine Wood who is related to me as wife
2. On Plan — \$— Payable to ——— who is related to me as —
3. On Plan — Payable to ——— who is related to me as —
4. On Plan — \$— Payable to ———, Who is related to me as—

First payment on New Certificate will be for the month of —, 190—.

Witness my hand and seal this 31st day of Dec. A. D. 1908.

(Signed)

WILLIAM H. WOOD. [SEAL.]

My P. O. Address is 926 Ingraham St., Washington, D. C.

Witness:

JNO M. KLINE.

I hereby certify to the identify of the member signing above, Secretary of Section No. 6.

NOTE.—If member desires to transfer only a portion of his Fourth Class Certificate, the above blank may be used, and member will so state in one of the blank lines in which case a new certificate in Fourth Class will be issued for the amount not transferred.

Issued by H. A. Entered by ———. Rated by V. Rated at age 65.

Certificate of Membership.

No. 264,581.

Name Wm. H. Wood, Address Washington, D. C.

Section No. 6, Mo. Payments, \$13.90.

The Supreme Lodge Knights of Pythias Insurance Department.

Plan "A."

\$2,000.

Deponent says that upon receipt of said new policy of insurance they paid to the defendant company, to its said secretary, John M. Kline, and took his receipt for same, the sum of \$13.90 per month, which said sum was paid monthly for three full years, as provided by the written statement given to the insured at the time that he accepted this new certificate, and as also provided in the policy itself, and deponent says that she then advised the said secretary of her desire to have the company carry the said insurance for one year, owing to the bad health of her husband at that time, and the condition that she experienced in paying said amount of money monthly, and deponent says that she was advised by the said secretary of said defendant company, to wit, the said John M. Kline, to give written notice to the company of her desire so to do, which she did, and delivered the same to the said secretary, the said John M. Kline, and deponent says she heard nothing further from the company or its secretary, directly or indirectly, until the following February, to wit, February, 1913, when during the first week of said month she went to the home of the said secretary and there saw the wife of the said secretary, the said John M. Kline, with whom she had always dealt in the absence of the secretary himself, (which occurred often) and advised the said wife that she desired to make the payment that was due that month to the said defendant company, to wit, the payment of \$13.90, and deponent says that

12 she was then advised by the wife of the said secretary who had charge of the business in his absence, that she was in plenty of time, but that she would advise her husband that night of the call, and that he would communicate with this deponent or deponent's husband immediately, giving them the date when the payment should be resumed; that to the surprise of this deponent and her husband, the said insured, she received notice shortly thereafter, to wit, during the month of February, from the said secretary, the said John M. Kline, in which he advised her that the insurance had lapsed; that she immediately sought the said secretary, the said John M. Kline, to ascertain why it had lapsed, and the said secretary then advised her that he had misinterpreted the terms of the policy in giving her the slip which was handed deponent at the time of the signing of the application for the new certificate, as an inducement for the acceptance of the new policy, the policy in suit, and deponent says that the said secretary, John M. Kline, stated further at this time that he would communicate with the company and endeavor to straighten the matter up.

Deponent says that she stated to him at that time that she would hold him and the company of which he was secretary, responsible for lapsing this policy contrary to their agreement with her, and her husband with reference to said policy, and the said Kline advised deponent not to say anything about it until he had communicated with the company for the purpose of straightening the matter up.

Deponent says that thereafter she sought further interviews with the secretary and endeavored to have the policy reinstated, and that the matter went along in this form for nearly a year, she insisting

13 upon her policy being reinstated and the said secretary putting her off, advising her that it would be straightened up; that the defendant insurance company some months thereafter, the exact month being unknown to this deponent, asked for a medical examination of the insured, which was granted and the insured was examined by a physician selected by the defendant company, through its secretary, the said John M. Kline, and shortly thereafter to wit, in August, 1914, deponent was advised that he was reinstated in the company, but that this deponent would have to pay in cash the sum of something over two hundred and forty dollars, with interest at five per cent, and to begin forthwith the payment of the monthly sum of \$13.90, which deponent was unable to do, and so advised the defendant company, for deponent further insisted to the defendant company that there was not due and payable under the policy this sum of money since she was entitled to one year's credit, to wit, from February 1, 1912 to February 1, 1913, and that there was then only seven months' payments due, or \$97.30, and deponent says that they declined to consider the acceptance of any sum other than the two hundred and forty odd dollars. Deponent is now advised that the insurance should have been extended according to the policy and the written agreement handed them by the secretary, for one year and 360 days. Deponent says that the matter was in this condition when the insured died, on, to wit, the 14th day of October, 1914; that due notice of his death was given and a request that the money be paid to them, but deponent says that the defendant company declined to pay the said sum of \$2,000. or any other sum, and there is now justly due and owing to this deponent under said policy the sum of \$2,000 with interest from the 14th day of October, A. D., 1914, exclusive of all set-offs and just grounds of defense.

CATHRINE WOOD.

14 Subscribed and sworn to before me this 3rd day of May, 1916.

[SEAL.]

ROBERT E. McNAMARA,
Notary Public, D. C.

Demurrer.

Filed June 1, 1916.

* * * * *

The defendant says the plaintiff's declaration herein is bad in substance.

THOMAS P. LITTLEPAGE,
A. LEFTWICH SINCLAIR,
Attorneys for Defendant.

Note.

Among the matters of law to be argued at the hearing of the foregoing demurrer are the following:

1. No legal cause of action is set out in the plaintiff's declaration.
2. The policy or certificate of insurance sued on, at the time of the death of William H. Wood, the insured, was not in force, but by the terms, provisions and conditions thereof had lapsed and become null and void.
3. The policy or certificate of insurance sued on was extended by the defendant for the period of one year, or 360 days, upon the request of the insured, but at the end of the period of extension thereof the said policy or certificate of insurance automatically terminated and became null and void.
4. The insured, by applying for reinstatement in the defendant Company and submitting to a medical examination for reinstatement, waived any supposed legal right or rights he then had against the defendant, based on said policy or certificate of insurance.
5. John M. Kline, the defendant's Secretary, did not have
15 any right or power by any statement, agreement, promise or manner of transacting business, to waive any of the provisions of said policy or certificate of insurance.
6. The statement alleged to have been made by John M. Kline, the defendant's Secretary, that—
"After three years, the Company will carry the insurance for one year, 360 days," etc.,
which appears on page five of the plaintiff's pleadings, did not bind the defendant, (a) because said John M. Kline was without authority to make said statement; (b) because said statement was not incorporated in or made a part of the policy, certificate or contract of insurance, and (c) because said statement is in conflict with the terms, provisions and conditions of said policy, certificate or contract of insurance.
7. It was the legal duty of the insured, on being reinstated in the defendant Company, to pay to the defendant the aggregate amount of the premiums due under said policy or certificate of insurance, from the end of the third year, when he stopped paying said premiums, to the date of his reinstatement, and his failure to do so justified the Company in setting aside said reinstatement, and bars any recovery against the defendant.
8. The policy or certificate of insurance sued on is a specialty and no action can be maintained thereon in the name of the plaintiff.
9. The declaration is insufficient in that it does not allege that satisfactory proofs of the fact and cause of the death of the insured were furnished to the defendant.

THOMAS P. LITTLEPAGE,
A. LEFTWICH SINCLAIR,
Attorneys for Defendant.

Pleas.

Filed September 15, 1916.

* * * * *

1. For a plea to the first count of the plaintiff's declaration the defendant says that it did not undertake and promise as in said first count alleged.

2. And for a further plea to the first count of the plaintiff's declaration the defendant says that it is not indebted to the plaintiff in manner and form as in said first count alleged.

3. And for a further plea to the first count of the plaintiff's declaration the defendant says that it is not indebted to the plaintiff in the sum of Two Thousand (\$2,000) Dollars, with interest thereon from the fourteenth day of October, 1914, or any part thereof.

4. And for a further plea to the first count of the plaintiff's declaration the defendant says that the certificate, policy or contract of insurance sued on is a specialty, being sealed with the seal of the defendant, and that the plaintiff, who is a stranger thereto, cannot have or maintain any action thereon.

5. And for a further plea to the first count of the plaintiff's declaration the defendant says that satisfactory proofs of the fact and cause of the death of William H. Wood, the insured, were not furnished and delivered to the defendant, as provided in and by said certificate, policy or contract of insurance.

6. And for a plea to the second count of the plaintiff's declaration the defendant says that it is not indebted to the plaintiff as in said second count alleged.

17 7. And for a further plea to the second count of the plaintiff's declaration the defendant says that it is not indebted to the plaintiff in the sum of Two Thousand (\$2,000) Dollars, with interest thereon from the fourteenth day of October, 1914, or any part thereof.

8. And for a further plea to the second count of the plaintiff's declaration the defendant says that it did not contract or agree to pay the plaintiff the sum of Two Thousand (\$2,000) Dollars, with interest thereon from the fourteenth day of October, 1914, or any part thereof.

THOMAS P. LITTLEPAGE,
A. LEFTWICH SINCLAIR,
Attorneys for Defendant.

Affidavit of W. O. Powers.

* * * * *

DISTRICT OF COLUMBIA, *To wit:*

Personally appears W. O. Powers, who, being first fully sworn, deposes and says:

That he is the General Secretary of the Supreme Lodge, Knights of Pythias, a corporation, the defendant named in the declaration filed in the above-entitled cause; that he has personal knowledge of the matters and things hereinafter mentioned and set forth, and makes this affidavit as the agent of the said defendant and in its behalf.

Affiant says that he denies that the said defendant is indebted to the plaintiff in the sum of Two Thousand (\$2,000) Dollars, or in any other sum, and avers and shows to the Court that the said defendant has a good, valid and complete defense to the action set up in the declaration and affidavit of the plaintiff herein.

Affiant says that the certificate, policy or contract of insurance
18 sued on herein was made with, and issued and delivered to
one William H. Wood, the insured, in his lifetime, on, to wit,
the first day of February, A. D. 1909, upon his application
therefor, in writing and under seal, bearing date on the thirty-first
day of December, A. D. 1908; that said certificate or policy of in-
surance was by the President and the General Secretary of said de-
fendant duly signed and executed, and sealed with the seal of said
defendant; that in and by the said certificate or policy of insurance,
said defendant promised and agreed to and with the said William
H. Wood, to pay to the beneficiary designated in said certificate or
policy of insurance, to wit, Catherine Wood, wife of the said William
H. Wood, subject to the provisions and conditions of said certificate
or policy of insurance, and not otherwise, the amount therein stipu-
lated; that said certificate or policy of insurance and the provisions
and conditions, forming a part thereof, are set forth in the said af-
fidavit of the plaintiff herein, and the same are hereby expressly re-
ferred to and made a part of this affidavit.

Affiant further says that after the said William H. Wood had made
the payments provided for and required in and by said certificate or
policy of insurance, for thirty-six consecutive months, he, the said
William H. Wood, on or about the twenty-fifth day of January, 1912,
notified the said defendant that he would not make any further pay-
ments thereon and requested it, the said defendant, to extend his in-
surance for the period of one year and three hundred and sixty (360)
days, and the said William H. Wood well knew that the said cer-
tificate or policy of insurance would immediately terminate and be
of no further force or effect, upon the expiration of the period of
extension; that, thereupon, the said certificate or policy of insurance,
according to the express provisions and conditions thereof, was, by
the said defendant, duly extended and carried for the period
19 of one year and three hundred and sixty (360) days, pursu-
ant to the notification and request of said William H. Wood,
and the said certificate or policy of insurance, on the 26th day of
January, 1914, automatically terminated and became null and void.

Affiant further says that, to wit, during the month of February,
1913, the said William H. Wood notified the said defendant that
he desired to resume the payment of premiums under said certificate
or policy of insurance, and he was promptly advised that the said
certificate or policy of insurance, under the laws of the said defend-

ant, which were furnished and delivered to the said William H. Wood at the time said certificate or policy of insurance was issued to him, as aforesaid, had been forfeited, and that the same would, on the 26th day of January, 1914, terminate and be of no further force or effect; that, thereafter, on the third day of August, 1913, the said William H. Wood, in accordance with the laws of the said defendant, applied to the said defendant for the cancellation of the forfeiture of said certificate or policy of insurance, and for the reinstatement and restoration of the said certificate or policy of insurance, and submitted to a medical examination, as a basis for said application, as required by the laws of said defendant; that, shortly thereafter, the said William H. Wood's application for the cancellation of said forfeiture and the reinstatement and restoration of said certificate or policy of insurance, was approved, upon the condition that the said William H. Wood, pay to the said defendant the sum of Two Hundred and Forty-five Dollars and Ninety Cents (\$245.90), this being the amount of the premiums provided for in said certificate or policy of insurance, from the first day of February, 1912, with interest thereon, and the amount required to be paid in such case by the laws of said defendant; that the said William H. Wood was promptly advised of the said approval of said application and requested to pay said amount, but he, the said William H. Wood, failed and refused to pay said amount, and the said application was rejected and denied.

Affiant further says that satisfactory proofs of the fact and cause of the death of the said William H. Wood were never furnished or delivered to the said defendant, as required by the provisions and conditions of said certificate or policy of insurance.

Affiant further says that the plaintiff has no right to recover the amount claimed herein against the said defendant; that the said defendant is not indebted to the plaintiff in said amount, or any part thereof. Affiant hereby refers to the defendant's pleas to the plaintiff's declaration herein, hereto annexed, and expressly makes them a part of this affidavit.

W. O. POWERS,
General Secretary.

Subscribed and sworn to before me this 19th day of Aug. A. D. 1916.

[SEAL.]

EMMA G. DALHEIM,
Notary Public.

My commission expires Dec. 4, 1918.

21

Opinion of Court.

Filed December 8, 1916.

* * * * *

This case is before the Court on a demurrer by the plaintiff to the defendant's fourth plea and on a motion to strike out the defendant's third seventh and eighth pleas, and upon a motion under the

seventy-third rule for judgment for want of a sufficient affidavit of defense.

The action is brought by the assured on what is called a certificate of membership in the defendant corporation. It recites that William H. Wood, the deceased husband of the plaintiff, was accepted as a member of the defendant corporation under a certain designated plan and class of the insurance department of the defendant, and that the corporation promised to pay "at the head office of its Board of Control, unto Catherine Wood, his wife, beneficiary of said member (the plaintiff herein), subject to his right to change the beneficiary as hereinafter provided, the sum of Two Thousand Dollars," etc.

The fourth plea, to which the demurrer is directed, avers that "the certificate, policy or contract of insurance sued on is a specialty, being sealed with the seal of the defendant, and that the plaintiff, who is a stranger thereto, cannot have or maintain any action thereon."

The certificate or policy which is set forth in full in the affidavit of merit purports in its testimonial clause to have the seal of the corporation affixed, and the word "Seal" follows the testimonial clause. This it is insisted by the defendant, makes it a sealed instrument, and as, according to the defendant's contention, the plaintiff was no party to the sealed instrument, she cannot
22 maintain an action thereon under a well established rule of the common law.

In argument, it was urged by the defendant that the action, if maintainable at all, could only be maintained by the legal representative of the insured, though it is conceded that in doing so such representative would be suing for the benefit of the beneficiary and not for the benefit of the estate of the insured. The practical effect of this contention, if sound, means that there must first be a suit by the legal representative of the insured for the benefit of the assured or beneficiary, and if, after having recovered, such representative refuses to account to the assured for the money so recovered, she would be forced to an action against him. Such possible circuitry of action ought to be avoided unless the Court is bound by a settled principle of law.

The question presented has resulted in much contrariety of judicial opinion. The cases relied upon by the plaintiff in support of the demurrer do not go as far as is claimed for them. The case cited by the plaintiff on this point of *Rodier v. Life Insurance Company of Virginia*, 32 App. D. C. 159, is not decisive of the question. There the case was brought by the administratrix of the insured, the assured in that case being the mother of the insured, and the policy was payable to her provided she survived the insured, as she did. The Court of Appeals sustained the action brought by the administratrix, but uses this language on page 166:

"We do not wish to be understood as holding that Mary K. Dee could not have brought an action upon this policy in her own name. It is unnecessary to determine that point, and we intimate no opinion upon it. All that we need now to decide, and all that we

do decide, is that the administratrix has a right, under the circumstances in this case, to maintain this action. Even if the promise to pay was made to the beneficiary as well as the insured, the personal representative of the latter may sue upon it."

23 The Court also refers to the discussion that had evidently taken place before the Court as to whether the policy should be treated as a sealed instrument, but the Court found it unnecessary to determine that point, referring to the case of Mutual Life Insurance Company v. Stibbs, 46 Md. 310, also relied upon by plaintiff, where a sealed policy was sued upon by the beneficiary, and the right to do so was upheld upon the theory that the instrument was a deed poll. The Court calls attention to the fact that the Maryland Court did not hold that the personal representative of the insured could not sue.

In the case Aetna Life Insurance Company v. France, 94 U. S. 561, the action was brought upon a policy issued on the life of one Andrew J. Chew, and payable to his sister Lucetta, and the Company, according to the policy, for the consideration paid by the insured for the benefit of the assured promised and agreed *to and with the said assured, that is the beneficiary*, to pay the said sum insured to the said assured, her executors, etc., upon notice and proof of the death of the insured. While the question of her right to sue was not raised in that case, she did recover and the Supreme Court sustained the recovery.

In the case of Brockway, Administrator, v. Connecticut Mutual Life Insurance Company, 29 Fed. 766, cited by the plaintiff, suit was brought by the legal representative of the insured against the Company, which demurred to the declaration, the Company insisting that the beneficiary alone could maintain the suit, and the Court sustained the demurrer, apparently resting its decision upon the ground that the beneficiary "*was the assured and promisee.*"

24 In the policy before the Court, the promise, as already indicated, is a promise to pay the beneficiary, plaintiff herein, the amount of the policy. While it is not clear that this is a promise to the beneficiary, whatever doubt exists in view of the state of the law as to her right to maintain the suit in her own name, that doubt the Court has concluded to resolve in her favor. The demurrer to the fourth plea is sustained.

The motion to strike out the third, seventh, and eighth pleas of the defendant is granted. The defense attempted to be set up by these pleas undoubtedly can be made under the general issue pleas which the defendant has filed.

The motion for judgment under the 73d rule must be overruled. It is based upon the theory that certain representations made by an agent of the defendant Company located in the District of Columbia, with whom the plaintiff and her deceased husband transacted the business of procuring the certificate or policy sued upon, and which influenced them or the insured in accepting are binding upon the Company, and particularly that the Company in its affidavit of defense does not deny that the representations were made. These representations dealt with what the defendant would contract to do

with respect to carrying the policy after payments of premiums had been made for three years. The contract actually issued provides for what is called extended insurance after premiums have been paid for three years. The agent gave a paper writing to the plaintiff and her deceased husband reading as follows:

"After 3 years, the company will carry the insurance for 1 year, 360 days," etc.

The policy provided that "after the member has made all payments required and paid all assessments for thirty-six consecutive months, he shall be entitled to surrender values as follows * * * the insurance hereunder may be extended for its full face amount for such a period as the balance will purchase," etc., and the extended values are shown on the policy, and these include one year and 360 days extended insurance after premiums and assessments have been paid for thirty-six months.

The affidavit of defense states that after the insured had made the payments of premiums for thirty-six months he notified the defendant that he would not make any further payments, and requested it to extend his insurance for the period of one year and 360 days, "and the said William H. Wood well knew that the said certificate or policy of insurance would immediately terminate and be of no further force or effect, upon the expiration of the period of extension." It then avers that the certificate or policy was extended by the defendant Company for the period stated, and that on the 26th of January, 1914, it automatically terminated and became null and void.

This statement, if true, contradicts the claim made by the plaintiff sufficiently at least under the well settled rule of construing an affidavit of defense, and the controversy so far as the facts are concerned must therefore be settled by a jury.

F. L. SIDDON, *Justice.*

December 8th, 1916.

Joinder of Issue.

Filed January 8, 1917.

* * * * *

The plaintiff joins issue on the first, second pleas to the first count of the declaration filed in the above entitled cause, and also on the sixth plea to the second count of said declaration filed in the above entitled cause.

W. GWYNN GARDINER,
Attorney for Plaintiff.

26

Replication to 5th Plea.

Filed January 8, 1917.

* * * * *

The plaintiff for replication to the fifth plea exhibited against her in the above entitled cause says that upon notice of the death of the said insured the defendant refused to pay the claim, and the refusal of the claim having been made by the Company, she was not required to file any further proof of death, the defendant company by said act thereby waiving the right of the provision of the policy for proofs of death.

W. GWYNN GARDINER,
Attorney for Plaintiff.

Joinder in Issue upon Replication to Fifth Plea.

Filed January 19, 1917.

* * * * *

The defendant joins issue upon the plaintiff's replication to the fifth plea.

THOMAS P. LITTLEPAGE,
A. LEFTWICH SINCLAIR,
Attorneys for Defendant.

Memoranda.

March 30, 1921.—Jury sworn and respited.

March 31, 1921.—Verdict for defendant on 1st count of declaration, and for plaintiff on 2d count for \$2,362.34.

27

Motion to Set Aside Verdict and for a New Trial.

Filed April 5, 1921.

* * * * *

Comes now the defendant, Supreme Lodge of Knights of Pythias, (a corporation) and moves the Court to set aside the verdict of the jury returned herein on the 31st day of March 1921, and to award a new trial, and as grounds for such motion respectfully states:

1. Error of law on part of the learned Associate Justice, presiding, in refusing to instruct the jury in accordance with defendant's prayer No. 1, as follows:

"The jury is instructed upon the whole case, to return a verdict for the defendant."

To which ruling defendant duly excepted.

2. In granting and instructing the jury, over objection and exception of defendant, in accordance with plaintiff's prayer No. 1, as to the measure of damages *and* etc.

3. Error of law on part of learned Associate Justice, presiding, in refusing to instruct the jury in accordance with defendant's prayer No. 2. To which ruling defendant duly excepted.

4. Error of law on part of learned Associate Justice, presiding, in refusing to instruct the jury in accordance with defendant's prayer No. 3. To which ruling defendant duly excepted.

5. Error of law on part of learned Associate Justice, presiding, in refusing to instruct the jury in accordance with defendant's prayer No. 4. To which ruling defendant duly excepted.

6. Error of law on part of learned Associate Justice, presiding, in refusing to instruct the jury in accordance with defendant's prayer No. 5. To which ruling defendant duly excepted.

7. Error of law on part of learned Associate Justice, presiding, in refusing to instruct the jury in accordance with defendant's prayer No. 6. To which ruling defendant duly excepted.

8. Error of law on part of learned Associate Justice, presiding, in refusing to instruct the jury in accordance with defendant's prayer No. 7. To which ruling defendant duly excepted.

9. Error of law on part of learned Associate Justice, presiding, in refusing to instruct the jury in accordance with defendant's prayer No. 8. To which ruling defendant duly excepted.

28 10. And for other errors of law appearing upon the face of the record.

THOMAS P. LITTLEPAGE,
SIDNEY F. TALIAFERRO,
Attorneys for Defendant.

Mr. W. Gwynn Gardiner,
Attorney for Plaintiff,
Washington, D. C.

DEAR SIR:

Please take notice that the foregoing and attached motion to set aside the verdict and grant a new trial in the above entitled cause, will be calendared for hearing before His Honor, Mr. Justice Sidons, holding Circuit Court No. 1, on Friday, April 15th, 1921, at ten o'clock A. M. or as soon thereafter as counsel may be heard.

THOMAS P. LITTLEPAGE,
SIDNEY F. TALIAFERRO,
Attorneys for Defendant.

Copy of the foregoing served and accepted this 5th day of April, 1921.

W. GWYNN GARDINER,
Pr. L. R. P.,
Attorney for Plaintiff.

Memorandum.

May 26, 1921.—Remittitur of \$840.44—filed.

Supreme Court of the District of Columbia.

Friday, May 27th, 1921.

Session resumed pursuant to adjournment, Hon. F. L. Siddons, Justice presiding.

* * * * *

Come now the parties hereto by their respective attorneys of record and thereupon the motion for a new trial filed in this cause being considered it is ordered that said motion be, and the same is
29 hereby overruled. Further it is ordered that judgment be entered upon the verdict rendered by the jury in the sum of \$2,362.34 less a remittitur of \$840.44 filed by plaintiff, interest on such sum to run from October 30th 1914.

Whereupon, it is considered that the plaintiff recover herein of defendant the sum of Fifteen Hundred Twenty-one and 90/100 Dollars (\$1,521.90) with interest thereon from the 30th day of October 1914, together with costs of suit to be taxed by the clerk and have execution thereof.

From the foregoing judgment the defendant by its attorneys, in open court, notes an appeal to the Court of Appeals; whereupon, the maximum of an undertaking to operate as a supersedeas is hereby fixed in the sum of Twenty-five Hundred Dollars.

Memoranda.

June 8, 1921.—Supersedeas (\$2,500) Undertaking on Appeal approved and filed.

July 12, 1921.—Time to submit Bill of Exceptions extended from day to day to and including December 2, 1921.

November 29, 1921.—Bill of Exceptions submitted.

30

Supreme Court of the District of Columbia.

Saturday, April 22nd, 1922.

Session resumed pursuant to adjournment, Hon. William Hitz, Justice presiding.

* * * * *

Before Judge Siddons.

The Court having this day signed the Bill of Exceptions, taken at the trial of this cause, and heretofore submitted, as of the time of the noting thereof, now hereby orders the same of record, nunc pro tunc.

Assignment of Errors.

Filed May 3, 1922.

* * * * *

The learned trial Court erred:

1. In refusing to instruct the jury in accordance with defendant's prayer No. 1.
2. In refusing to instruct the jury in accordance with defendant's prayer No. 2.
3. In refusing to instruct the jury in accordance with defendant's prayer No. 3.
4. In refusing to instruct the jury in accordance with defendant's prayer No. 4.
5. In refusing to instruct the jury in accordance with defendant's prayer No. 5.
6. In refusing to instruct the jury in accordance with defendant's prayer No. 6.
7. In refusing to instruct the jury in accordance with defendant's prayer No. 7.
8. In refusing to instruct the jury in accordance with defendant's prayer No. 8.
9. In granting and instructing the jury in accordance with plaintiff's prayer No. 1.
10. In denying defendant's motion to strike out all evidence which related to the Fourth Class certificate issued to W. H. Wood in 1885.
11. In admitting in evidence, over objection and exception of defendant, plaintiff's exhibit No. 3.
- 31 12. In permitting and directing the plaintiff to file a remittitur in the sum of \$840.44.
13. In denying motion of the defendant to set aside the verdict of the jury.
14. For other errors apparent on the face of the record.

THOMAS P. LITTLEPAGE,
SIDNEY F. TALIAFERRO,
Attorneys for Defendant.

Designation of Record.

Filed May 3, 1922.

* * * * *

The clerk will prepare transcript of record to consist of the following:

1. All docket entries.
2. Plaintiff's declaration, particulars of demand and affidavit.
3. Demurrer to plaintiff's declaration.
4. Defendant's pleas and supporting affidavits.

5. Plaintiff's joinder in issue. (1, 2, 1st count and 6th plea 2nd count.)
6. Plaintiff's replication to 5th plea and joinder thereon.
7. Memorandum of trial and verdict of jury.
8. Defendant's motion for new trial.
9. Memorandum of order of court as to remittitur.
10. Memorandum of overruling of defendant's motion for new trial, filing of remittitur and entry of judgment.
11. Memorandum appeal noted by defendant, supersedeas bond fixed.
12. Memorandum of filing of supersedeas bond by defendant after approval of same by court.
13. Orders, if any, extending time for submission of bill of exceptions and extending time for filing transcript of record in Court of Appeals.
14. Bill of exceptions.
15. Assignment of errors.
16. This designation.

32

THOMAS P. LITTLEPAGE,
SIDNEY F. TALIAFERRO,
Attorneys for Defendant.

Service of a copy of the foregoing designation of record is acknowledged this second day of May, 1922.

W. GWYNN GARDINER,
Attorney for Plaintiff.

33

Docket Entries.

* * * * *

At Law.

No. 59119.

Date.	Judgment.	Proceedings.
1916.		Deposit toward costs by Gardiner.
" May	4.	Appearance, order; Declaration, Par. D., & Affi. filed.
" "	"	Summons (2) & Copy dec'l.....issued.
" "	18.	" ret'd served May 8/16.
" June	1.	Appearance Littlepage & Sinclair for def't; Demurrer to dec'l.....filed.
" "	8.	Notice of hearing on demurrer....."
" Sept.	8.	Demurrer to declaration overruled (M62 p432).
" "	15.	Pleas (8) & Afft....."
" Oct.	10.	Demurrer to 4" plea; Motion to strike out 3", 7" & 8" pleas; Motion for judgt. under 73" Rule, & Notice....."

- 1916, Dec. 8. Demurrer to 4" plea to 1" count sustained. Motion to strike out 3", 7", & 8" pleas granted. Motion for judgt. overruled. (M.64 p.175).
- " " " Opinion of Court filed.
- 1917, Jan'y 8. Joinder in issue on 1" & 2" please to 1" count dec'l & on 6" plea to 2" count.
- " " " Replication to 5" plea..... "
- " " 9. Docket & Index.
- " " 19. Joinder in issue on replication to 5" plea..... "
- " " 30. Note of issue & Notice of trial Calendared..... "
- 1918, Aug. 15. Calendared for Oct. 1918 term order, & appearance Duvall.
- 1919, July 17. Calendared for Oct. 1919 term order.
- 1921, Mch. 17. Plff. called & suit dismissed at Plff.'s costs (M70 p307).
- " " —. Appearance Duvall for Plff. withdrawn (M70 p303).
- " " 18. Dismissal vacated & case restored (M70 p309).
- " " 30. Spa. def. (1) wits. & ret'd. Not found.
- " " " Certified to Circuit No. 2 for trial (M70 p328).
- " " " Jury sworn & respited (M71 p11).
- " " " Appearance Taliaferro for Deft., order filed.
- " " 31. Verdict for Plff. \$2,362.34 (M71 p11).
- " Apr. 5. Addl. deposit by Gardiner.
- " " " Mo. for new trial filed & entered (M.71 p20).
- " " 15. " " " cont'd to Apr. 29/21. (M.71 p38).
- " " 22. " " " Submitted to Court (" p50).
- " May 26. Remittitur of \$840.44 of verdict filed.
- " " 27. Mo. for new trial overruled & judgment on verdict for plaintiff against defdt. for \$1,521.90 with interest from Oct. 30 1914 & costs. Appeal noted & supersedeas fixed at \$2,500.00 (M71 p117).
- " June 8. Deposit for costs by Littlepage.
- " " " Supersedeas Undertaking \$2,500 National Surety Co. app'd & filed.
- " July 12. Time to submit Exceptions extended to Aug. 3/21 (M70 p477).
- " Aug. 2. Time to submit Exceptions extended to Aug. 24/21 (M71 p164).
- " " 23. Time to submit Exceptions extended to Oct. 7/21 (M71 p180).
- " Oct. 6. Time to submit Exceptions extended to Oct. 19/21 (M71 p189).
- " " 18. Time to submit Exceptions extended to Nov. 11, 1921 (M71 p20).
- " Nov. 9. Time to submit Exceptions extended to Dec. 2 1921 (M71 p37).

34

- 1921, Nov. 29. Bill of Exceptions submitted (M71 p294).
 1922, Apr. 22. " " " signed & filed (" " 494).
 " " 28. Stipulation as to including Exhibits to bill exceptions app'd & filed.
 " May 3. Assignments of Error & Designation of record filed.
 " " 5. Deposit for costs by Taliaferro.

35

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 34, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 59119 at Law, wherein Cathrine Wood is Plaintiff and Supreme Lodge Knights of Pythias, a Corporation, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 26th day of May, 1922.

[Seal of Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

M.H./E.W.

36 . . In the Supreme Court of the District of Columbia.

At Law.

No. 59119.

KATHERINE WOOD, Plaintiff,

vs.

SUPREME LODGE, KNIGHTS OF PYTHIAS, a Corporation, Defendant.

Bill of Exceptions.

Be it remembered that on the 30th day of March 1921, the above entitled cause came on for trial before Mr. Justice Siddons and a jury; Mr. W. Gwynn Gardiner appearing on behalf of the plaintiff, and Messrs. Thomas P. Littlepage and Sidney F. Taliaferro appearing on behalf of the defendant.

The plaintiff to sustain the issues joined on her behalf, by counsel, made an opening statement to the jury in the course of which the following occurred:

Mr. Gardiner: "* * * We will show you that William H. Wood, in April of 1885——"

Mr. Littlepage (interposing): If your Honor please, I see Mr. Gardiner is starting back in 1885 and referring evidently to some other policy of insurance other than that which is sued upon and set out in the pleadings, and we object, therefore, to any opening statement being made upon any policy of insurance that is not set out in the pleadings and upon which this action is not brought.

* * * * *

The point is, your Honor, that in this pleading, there is one contract of insurance sued upon and only one. The action is based upon that contract, a sufficient cause of action, according to the statement here, as relied upon, and our position is that there is no other cause of action that we are brought here to face and meet, and we are here to meet the cause as stated in the pleadings, and
 37 another policy of insurance or a dozen policies of insurance that might or might not have been held by the insured in this case, unless they are sued upon in these pleadings, unless they are made a part of the case, we do not feel that we are called upon to meet them, and upon that point we desire a ruling.

And thereupon, following extended argument upon the point, the following occurred:

The Court: Well, I will not rule on any legal question involved at this time. You can make your opening statement, and I overrule your objection, to which you may have an exception, if you want it, Mr. Littlepage.

And thereupon the plaintiff, KATHERINE WOOD, as a witness in her own behalf, gave testimony tending to prove the following:

That she is the widow of William H. Wood. He died in October, 1914. At time of death he was seventy or seventy-one years of age, suffering with hardening of the arteries and stomach trouble, and was in this condition for about fifteen years before he died, during which time, by reason of her husband's physical condition, she assumed all of the responsibilities of her household duties. At the time of the death of her husband he was a member of the Excellior Lodge of the Knights of Pythias, and had a policy of insurance in the Knights of Pythias. She paid monthly dues to the Lodge, and also paid monthly dues on these two policies, which were paid separately from the Lodge dues.

Thereupon counsel for the plaintiff presented and offered in evidence cards each purporting to represent one year's payment, that is twelve payments, payments being made by the month. Three of these cards represented payments on the last policy issued, the balance on the first policy issued.

Defendant's counsel objected to the introduction of the card showing payment of the old policy issued in 1885 as being irrelevant and immaterial to any issue joined in the case.

38 The Court: Well, I will admit the testimony subject to the right to strike it out hereafter.

Mr. Taliaferro: Your Honor will allow us an exception.

The Court: Yes.

These are not all of the cards that witness received from the Knights of Pythias. There were others. She identifies the signature of J. M. Kline on the cards, and states that he is the secretary with whom she dealt in the matter of the two policies, and that she knew no one else in connection with the company in regard to these two policies except his wife, to whom she usually paid the money and received by mail the card, receipted by her husband.

Defendant's counsel objected to any statement with reference to the old policy or to any statement or circumstance referring to the old policy.

The Court: I am letting it in subject to a motion to strike it out.

Mr. Taliaferro: And our exception goes to the whole thing?

The Court: Yes.

The first policy was given to Mr. Kline, and that is the last she has seen of it.

Thereupon call being made upon defendant's counsel, and written notice served upon them to produce the original policy—the first policy issued to the insured—was by defendant's counsel delivered to plaintiff's counsel.

Mr. Littlepage: Under the usual objections, of course, your Honor.

The Court: Yes.

Thereupon this policy was offered in evidence subject to all the defendant's rights, which policy was dated April 16, 1885, number 1658, issued to W. H. Wood in the sum of two thousand dollars, Katherine Wood, the witness, being named beneficiary, copy of which policy is hereto annexed, as plaintiff's exhibit Number 2.

39 It was agreed between counsel that the original of this policy might be submitted to the Court of Appeals at the time of the argument of this case in the Court of Appeals.

Witness gave up this policy in 1909. She talked with Mr. Kline before giving it up.

The conversation witness had with Mr. Kline was at his home on Q Street between 6th and 7th, in the same house where he had been living for years, and where witness had been transacting her business with him with reference to the payment of premiums on this policy.

Mr. Kline told her that the premiums had taken a raise from \$8.00 to \$13.90, and she said to him that she would have to drop it, she could not keep it going, could not pay it. He said, "Well, I am sorry. It is on a solid basis now. It is on a banking system. I would advise you to keep it going, if you had to mortgage your home," not knowing that the home was mortgaged to its full value.

He said, "Well, now, it is on a solid basis, and if you will carry it for three years, the company will carry it for you and give you a financial rest of one year, or 360 days," She said, "Well, then, you write that down and I will take it over to my daughter and I will talk to her about it and see if she will help me to carry it."

Witness identified a piece of paper which she said was the piece of paper handed her at this interview by Mr. Kline, and that Mr. Kline wrote on the piece of paper in her presence, and read it to her. Thereupon the piece of paper was offered in evidence.

Defendant's counsel objected to the introduction of this piece of paper upon the ground that it antedated the contract sued upon, and that all the negotiations were merged into that written instrument.

The Court: It will go in subject to the same motion to strike it out.

It was marked as plaintiff's Exhibit Number 3," and reads thus: "After 3 years the company will carry the insurance for one year, 360 days. After 4 years 2 years 185 days. After 5 year 2 years, 340 days, etc."

40 Witness then took this paper to her daughter's home, and talked to her daughter about it, and left it with her daughter.

She afterwards talked with her daughter again—the second time,—After seeing her daughter a second time she again saw Mr. Kline at his home and at this interview she told Mr. Kline that she would accept this increase and pay for the three years, and if she was not able to carry it at the end of the three years, she would accept their proposition.

He told her then that she could resume her payments at the same amount of \$13.90 per month. After that she delivered up to Mr. Kline the first policy issued to her husband by the defendant company.. When she told Mr. Kline that she would accept the increase she received a new policy.

It is agreed by counsel that the copy of the said second policy attached to the declaration, and made a part thereof is a correct copy of said policy.

Counsel for both parties also agree that both policies and also plaintiff's exhibit No. 1, (cards) may be exhibited and used for all purposes in the Court of Appeals.

After the receipt of this policy witness paid \$13.90 per month to Mrs. Kline, and received in the mail a receipt of Mr. Kline in the same manner as had been done on the old policy.

She paid premiums of \$13.90 per month on the second policy for three years, then went to see Kline and told him she would accept their proposition that they would carry it for her for one year or 360 days. He told her it would be necessary for her to write to the Home Office and make application for it, which she did. She did not receive any letter in reply but there after Mr. Kline told her that they had agreed to her proposition. At the expiration of the year witness returned to the home of Mr. Kline in February, 1913 and saw Mrs. Kline. She had her \$13.90 with her to begin her payment again.

Mrs. Kline refused to take the money and witness got a card through the mail from Mr. Kline that Mr. Wood's policy had elapsed, and requested that the witness come immediately to see him
41 and she went the evening that she received this card.

He told witness that Mr. Wood's policy had lapsed. Witness said "I hold you responsible and the company for this, because, I was in here to pay it."

Mr. Kline replied, "I will write to the Home Office and do what I can for you. You go home and you will hear from me again," which witness did.

Shortly thereafter Mr. Kline sent for her again and the same thing occurred. Witness said that she would hold him and the Home Office responsible because Mr. Kline advised her to take up this new policy, and that they would give her a rest, but at this time he advised her that the policy had lapsed.

This thing continued backwards and forwards, witness insisting that the policy be reinstated, and he saying that he was endeavoring to reinstate it. He kept saying that he would send to the Home Office for her and do what he could, that he was sorry that it happened, that he did not understand it. She called Mr. Kline's attention to this written statement given her at the time she agreed to take the policy, and Mr. Kline kept saying that he did not know anything further than what he had told her.

Finally he said that he had another letter from the Home Office. He kept all the letters, would not give witness any of them. Mr. Kline said, regarding the misunderstanding with him, "Don't mention this to nobody; don't tell anybody."

In October witness's husband died. In the meantime, however, during these negotiations there was a proposition to reinstate him, "he was accepted" and in August before her husband died, Mr. Kline called at her home in Brightwood Park and said, "Mrs. Wood, can you pay back the company \$244.00 with 5% interest?" Then Mr. Wood will be a full member again. "I said, well where does my rest come in." I said, "I would have trouble enough to try to pay my monthly payment as long as I started off, if I had known I had to pay \$244.00, where could I get it? Where could a poor
42 woman get it?" I said "Why didn't yiu tell me I had to meet this at the end of the year?" He said, "I did not know it myself?" That is where he said he did not know it. He said "I did not know it myself." I said, "You told me that the company would hold this against my policy and deduct it at the time of death." That is what Mr. Kline told me, that it would be held against the policy, and of course I accepted on those terms, because I knew it would be a rest. Then I could begin to resume my monthly payments of \$13.90 a month, but I could not pay the \$244.00 and 5% interest. I could not. Then he said he did not know anything about it.

Now, I says, "Where is my rest?" "That is all I said." That is what he said in the month of August. Then of course it was settled right there. He had offered it. That was in the month of August.

That thereafter a friend in the Lodge, who had visited her during her husband's sickness, wrote to the Home Office about the matter. Their reply was delivered to her, but has been lost and cannot be found. They spoke of Wood as having been a member but his policy had lapsed and they could not pay her anything—that he was out of it.

Thereupon a postal card dated May 25, 1913, addressed to W. H.

Wood was offered in evidence as plaintiff's Exhibit No. 5, after the defendant conceded that the same was in the handwriting of Mr. Kline and signed by Mr. Kline, which states thus:

DEAR SIR AND BROTHER:

Replying to your inquiry for your information will say that your extended insurance will expire on Dec. 13, but you can resume payments at any time.

Fraternally yours,
(Signed)

JOHN M. KLINE,
Secretary.

Thereupon a letter dated December 21, 1911, addressed to Mr. W. H. Wood, the signature of Mr. John M. Kline, secretary, being conceded by the defendant's counsel was offered in evidence as plaintiff's Exhibit No. 6, and reads thus:

43 DEAR SIR AND BROTHER:

Replying to your verbal inquiry of yesterday, you are informed that your certificate of membership in the fifth class is dated February 1, 1909, consequently you will not be a member for three years until Feb. 1, 1912, and you must continue your payments until that time. Wishing you a very Merry Christmas and a happy New Year, I remain,

Fraternally yours,

JOHN M. KLINE,
Secretary.

618 Q St. N. W.

Both the postal card and letter were sent through the United States mail.

Thereupon a postal card dated June 13, 1913, in the handwriting of John M. Kline, secretary, the signature and handwriting being conceded, was offered in evidence as plaintiff's Exhibit No. 7, and reads thus:

Mr. W. H. Wood,
926 Ingraham Street,
Washington, D. C.,
Brightwood Park.

DEAR SIR AND BROTHER:

If your or Mrs. Wood will call at my residence on any day at 5 o'clock P. M., or on Sunday, I have some important information to communicate to you.

Fraternally yours,

JOHN M. KLINE,
Secretary.

618 Q Street, N. W.

Regarding plaintiff's Exhibit No. 7, witness stated she had no recollection as to what the information was but it was something in connection with the insurance.

Thereupon printed circular "Plaintiff's Exhibit No. 8" was offered in evidence, copy of which is hereto attached.

Cross-examination:

Witness stated that she attended to all of the business of her husband. On account of her husband's sickness she saved him of all of the worry and care that she could. He was a sick man a long time—about fifteen years. He was not laid up in bed all of that time, but he was a sick man for all of the fifteen years. He
44 had spells in bed at times, and had medical attention always, constantly taking medicine and receiving medical attention through the whole period of fifteen years before his death. Witness always paid to Mrs. Kline and received the card from Mr. Kline through the mail. She could not say that she ever read the "Important Notice," (Important notice" on the back of the card), but remembered seeing all of the words on the card. Her time was taken up so much that she thought everything was all right between Mr. Kline and the Home Office, and she cannot say that she ever read what was on the card. She always paid her card to Mrs. Kline occasionally saw Mr. Kline when he was home from his work as a government clerk, and "when she went in in February to resume to \$13.90 a month, after the company had carried it a year, she refused to take it," and after that her talk was with Mr. Kline. When she talked with Mr. Kline, Mrs. Kline always left the room.

No other member of her family acted for her husband in reference to this insurance policy. Her husband never accompanied her. Mr. Kline never stated to her that he wanted Mr. Wood to come and see him in reference to this matter. "He told me not to tell Mr. Wood nor nobody else. He did not want it to get out." So far as witness understood from what Mr. Kline said to her at the time the question came up of taking the new policy, there was no choice about taking the new policy. "Why as far as I can remember that now, there would not be no more old policy. It was raised so that I either had to drop it or pay the \$13.90 per month. There was no more \$8.00 assessments. It was either drop it or take up this new plan." Mr. Kline said that to her. The old policy kept increasing from \$2.50 to \$4.00 and from \$4.00 up to \$8.00. "I do not know whether I have any cards here for \$8.00, but I know I paid \$8.00 a month for a number of years."

I have got witnesses here that is in the Lodge to testify to that. I understood that I had to take this new policy and pay \$13.90 or
45 would have no insurance." The new policy Mr. Kline handed to her when she went into pay her dues. She took it home and at that time "revealed" it to her husband. She did not read the policy. She glanced over it casually. She read the second page of the policy and particularly that part which has a heading "Paid-up and Extended Insurance." Mr. Kline explained

it so thoroughly to her that she accepted the proposition. Her understanding was that she could pay three years and then after a rest for a year, could resume her payments. That was the way Mr. Kline explained it to her, that at intervals of three years she would have a financial rest for one year or three hundred and sixty days.

That is what witness asked him to put in writing at the time when he told this to witness, and he did put it in writing at that time. It is marked as "Plaintiff's Exhibit No. 3."

"I took it to my daughter and she read it; I never read it. Mr. Kline read it to me. He wrote it and read it, and I was so upset that I just took it over to my daughter's." When witness took the paper over to her daughter's the latter saw Mr. Kline.

"Mr. Kline advised me and directed me and I took Mr. Kline's word."

She saw on the second page of the new policy a schedule under "Paid-up and Extended Term Insurance" in which appeared: 36 months 3 years paid-up certificate of \$276.00, extend the amount of this certificate for one year—360 days.

"I depended so much on Mr. Kline and he advised me and he was the one that told me that if I carried the \$13.90 per month, at the expiration of three years the company would carry it for one year or 360 days. Then when I accepted that proposition I went back and told him, and then he said I would have to write to the Home Office, which I did, and I accepted it, and it went along then, the company carried it for me, and all of this transpired from that time up to August, when in the month of August he came to me and he said that——"

Witness does not know what extended insurance means. "I do not know anything about insurance. I think it a very complicated affair myself."

46 By Mr. Taliaferro:

Q. Did your husband take any steps to have himself reinstated after his insurance lapsed? A. Did he? According to Mr. Kline, Yes sir.

Q. What did he do? A. Mr. Kline sent for him and told him to be examined, and if he passed the examination why, he would be reinstated. Then Mr. Kline sent for my husband, and my husband went down—he sent for him to meet him on a Sunday afternoon, what date now I cannot tell, but on a Sunday afternoon Mr. Kline went with Mr. Wood to the doctor, then he told Mr. Wood to go home and he would hear from him again, which he did. He heard from him.

Q. And what was the word? A. He told Mr. Wood that he was reinstated. Then this paper came; that if I could make up the \$244.00 and 5% interest—and I told him no. Then he says, "Well, his policy has lapsed."

Q. You understood that amount would have to be paid in order to have the insurance reinstated. Was that right? A. Why, I suppose that is what he meant, and I said to him then, "Where does my

rest come in?" I said, "I would have tried to have struggled along each month," and he said he did not know that himself. He said, "I did not know it." He told me that it would be held against my policy, and to be deducted and I thought that was al- right."

Redirect examination.

By Mr. Gardiner:

Q. When did he tell you it would be deducted, at that time? A. No sir. He told me when the plan was being made in his home.

Q. But at that time he told you you would have to pay it in cash? A. That I would have to pay it in cash, otherwise that he would be out of it entirely.

Q. That is all. A. Then of course I dropped it right there.

47 Thereupon at one fifteen at the convening of Court after the recess hour, counsel for the Plaintiff submitted to the Court a calculation of all the premiums paid on the two policies with interest from the date of such payment which he figured made a total of \$1,772.26, subject to the approval of the other side and subject to any change or correction that may be found therein by the other side. It was not offered as evidence but submitted at that time so that the other side might have the advantage of his figures and the expert of the other side would have an opportunity of checking up his figures and making corrections in any respect.

48 Thereupon MARY ELIZABETH EVANS testified on behalf of the plaintiff, stating in substance thus:

That she is the only child of Mrs. Wood who has just finished testifying in this case.

Witness had a talk with her mother at which conversation "Plaintiff's Exhibit No. 3" was handed to her by her mother, and after that conversation and after the receipt of this paper, she took the paper with her to see Mr. Kline. "It was about a day or so after receiving the paper from my mother. I saw Mr. Kline at his home on Q Street between 6th and 7th, no one being present but Mr. Kline himself. I wanted to be sure that the statements on that paper were correct, and if what my mother had told me was true, and I wanted to see if my mother thoroughly understood what Mr. Kline had told her. Mr. Kline advised me not to let the policy lapse, or for us to stop paying our monthly premiums. He advised me by all means to renew, or to take out a new policy, and the increased rate would be \$13.90 a month. He said as my father had been in so long it would be a shame for us to drop the policy now, but he said to make every sacrifice that we possibly could, and to take out a new policy and continue the payment of the premiums of \$13.90 a month; that would be for the new policy; and he said if we paid these premiums for three years, at the expiration of that time, the company would then carry the policy for us for a year, or 360 days, and at the expiration of that time we could then

resume our monthly payments of \$13.90 a month, and understanding that such was the condition I told him then that I would advise my mother to take out the new policy."

"One of the main reasons why I went down there was that I carried the insurance for my father. I gave my mother the money. My father was so ill and it took so much money to support him that they could not afford to carry it by themselves. I told Mr. Kline then that I would advise my mother to take this new policy, and I did so. I took this piece of paper (Plaintiff's Exhibit No. 3), carried it home with me, and kept it,—put it away. I then had a conversation with my mother and I afterwards gave her money every month for three years to pay the insurance."

"When Mr. Kline notified us that the policy had lapsed, I went and had another talk with him, but do not know the exact date. We got a notice—think it was on a postal card."

"It was in the beginning of 1913 about the time that our next payment became due, as I understood it—the same month that it became due—that I saw Mr. Kline. This was also at his home. Mr. Kline said to me that he was very sorry, but the policy had lapsed. I asked him why could such a thing happen when we had not been notified; that he did not send us a notice. I thought that before anything like that would happen, the company would send us a written notice. He said well, he did not understand why we had not received the notice, but that that was not his duty; that if such a thing was done, that would have to come from the Home Office. So I wanted to know why it was that the policy had lapsed when he told us that the company would carry the policy for a year and then at the expiration of the year we could resume our payments of \$13.90 a month. I wanted to know why it was, when we were willing to pay that we were informed that the policy had lapsed. So Mr. Kline said that he had misinformed us; that he did not understand the rules to be such as they were. He said that he thought himself that at the expiration of the year that we could or would be able to resume our monthly payments of \$13.90 and he said that he was very sorry that it had happened. I talked on with him for a while, and then he said that he would do all that he could for us; that he would write to the home office, but he mentioned several times that he was very sorry that it happened, because it was because he had misunderstood—I don't know what you call it, the laws or what; but that he misunderstood it, that when he advised us to take that year's rest, he was sure that he was telling us the truth, and that we would be able to resume our monthly payments of \$13.90 at the expiration of the year. So then Mr. Kline wrote on to the home office to see if they would do anything for us."

50 She was not present when Mr. Kline went to her mother's house and called on her to pay two hundred and forty some dollars, she don't remember the exact amount, but Mr. Kline came to her house first before going to her mother's house on the same day and told her what the company had determined to do.

Q. What did he tell you now? A. He said—well, before that you

know they said that if my father would pass another examination that they would reinstate him, and he passed the examination and then they said that if we would pay them two hundred and forty some dollars, I don't know the amount, and five per cent, that we could resume our monthly payments of \$13.90.

Q. Do I understand that you were to pay that in cash? A. Certainly.

Q. Did he say anything about them taking a lien on the policy for that, A. What do you mean by that?

Q. Well, he said you would have to pay that much money in cash? A. Yes; if we would refund them that money, then they would reinstate him; the policy would not be lapsed if we would pay two hundred and forty some dollars and five per cent.

Q. And you did not have that money? A. No, I am sorry to say at the time being that we did not, or else we would have accepted their terms and paid the money.

Cross-examination:

During all of her conversation with Mr. Kline there was no one present except witness and Mr. Kline. She read the statement that Mr. Kline gave her (Plaintiff's Exhibit No. 3), and understood therefrom that if they paid the monthly payments for three years they would have a rest of one year or 360 days, and then they could resume their payments and carry them for a length of time which the witness could not recall exactly. Then after they had carried them for a certain length of time, "the company would then give us another rest, and we could then resume the monthly payment of \$13.90, but I don't remember the exact time."

51 "I did not see that last policy we got from Mr. Kline until after all this trouble came up. I know my mother received it. She told me she had received it and put it away. I knew nothing about what it contained. I did not think it was necessary because we believed everything that Mr. Kline told us."

"My father and mother lived at 926 Ingraham Street, Brightwood in 1913. I have not a son named Robert Evans. I have a son named Raymond Evans who at different times carried on correspondence for my father. I think my son wrote when we went to see Mr. Kline to see about taking the year's rest. Mr. Kline told us we would have to write to the home office and make application. I think my son did it. He made out the application for my father and my father was too ill to do anything like that himself."

Witness heard her father instruct her son to communicate to either the home office or Mr. Kline on some matter pertaining to this policy.

At that time her son was about twenty-two years of age and employed by the Masonic Mutual Life Insurance Company.

Thereupon plaintiff's counsel made the following statement: "Now, with the exception of this statement with reference to the

payments, that is my case. Of course, they are in evidence here, but the jury would have to figure them up and calculate them. I offer them as a means of convenience."

The Court: If there is any trouble with the totals——

Mr. Gardiner: That is all. Of course they are already in evidence in the other form.

Mr. Littlepage: I do not understand they are in evidence, your Honor and I object.

The Court: Well, they are in evidence, but this would be the detail. If they should be held to be properly in evidence, and then you should find that Mr. Gardiner's additions are all right, there will be no trouble about agreeing I suppose or correcting the amount.

Mr. Littlepage: Not the slightest.

Mr. Gardiner: Now I rest at this point if your Honor please.

Mr. Taliaferro: If your Honor please, now we move at this time that all of this testimony which relates to the policy and to conversation prior to the issuing of this last policy, being No. 264,581, be now stricken from the record.

Defense counsel assigned as their reasons for this motion that the written instrument speaks for itself, and all of the negotiations which led up to its issuance and acceptance, and it has been testified that it was accepted and payments were made thereunder for three years were merged into the written instrument. The motion was argued at length.

The Court: Yes. The motion to strike out the testimony is overruled, and so much of the motion as requests a directed verdict is granted as to the first count of the declaration and is overruled as to the second count, and an exception on both sides.

Thereupon defense counsel stated that they had made no motion for a directed verdict on the first count, but had only made a motion to strike out certain evidence.

The Court: The record will stand then, simply that your motion to strike out the evidence is overruled.

Mr. Taliaferro: Yes.

The Court: And the exception is noted.

And thereupon counsel for the defendant moved that the jury be instructed to return a verdict for the defendant on the first count.

And thereupon the Court stated that as far as the motion to direct a verdict under the first count was concerned, it was granted. An exception was allowed to Mr. Gardiner.

The Court: You are making the motion as to the second count, Mr. Taliaferro?

Mr. Taliaferro: No. We made no motion as to that, your Honor.

The Court: Then you may go to the jury on the second count of the declaration.

Thereupon JOHN M. KLINE testified in behalf of the defendant, and stated in substance thus:

He is a clerk in the Treasury Department, having been employed there for 51 years, has no other business, is a member of the Knights of Pythias order, *nad* has been a member for over fifty years, and carries insurance in the Insurance Department of the Knights of Pythias. He has carried this insurance for forty-six years.

He is secretary of Section 6 of the Knights of Pythias, which consists of members of the Insurance Department from the different Lodges in this city of Washington. It is composed of all the members of the different lodges in the city, and all the members of Section No. 6 have insurance in the Knights of Pythias. Witness is secretary of that section and has been such for thirty-six years.

Witness had to do with the issuing to Mr. William H. Wood the fifth class policy.

"The Supreme Lodge of the Knights of Pythias enacted certain laws transferring such members who desired to transfer, from the fourth class to the fifth class, and as the Secretary of Section No. 6, Mr. Wood came to see me and I furnished him with the information in regard to the matter, and also a blank application for transferring from fourth to fifth class, which he signed and I witnessed. He surrendered his fourth class certificate. I attached it to the application for transfer to the fifth class, and forwarded it to the home office. I dealt with Mr. Wood personally, had no dealings with his wife or daughter. I talked to them in regard to it, but transacted no business, I talked with Mrs. Wood and her daughter Mrs. Evans, before receiving the application for transfer."

"The substance of the conversation with Mrs. Wood and her daughter that if they made up their mind to transfer to the fifth class, that I was prepared to make the transfer, but that I would have to see Mr. Wood, as he was insured. I believe Mrs. Evans accompanied her mother and engaged in the conversation. Mr. Wood subsequently came to see me and I talked it over with him, explained it to him, and, as a result, transferred him to the fifth class, that is, I took his application for transfer and forwarded it.

"Thereafter there was a certificate issued and forwarded to me to be delivered to Mr. Wood. I delivered it and also a copy of the laws of the Insurance Department at the same time in person.

Witness received a letter which was handed to him by either Mrs. Wood or Mrs. Evans or Mrs. Evans' son, being received by witness in the course of business as Secretary of Section No. 6 of the Insurance Company. It was offered as "Defendant's Exhibit No. 1," and it states thus:

926 Ingraham Street,
Brightwood, D. C.

August 26, 1921.

Mr. John M. Kline,
618 Q Street N. W.,
Washington, D. C.

DEAR BROTHER:

I am so financially embarrassed that I am unable to pay the back premiums and interest, amounting to \$245.90 on my policy and still continue the premiums. Please see that my policy is kept in force until January, 1914, at which date the extended insurance on my policy will expire, and therefore my policy lapse.

Fraternally yours,

WILLIAM H. WOOD.

Down in the corner are the initials "MHS-RE".

Cross-examination:

Witness states that all of his dealings with reference to the exchange of the policies was with Mr. Wood—knew that Mr. Wood was in bad health, and that all the premiums were paid by the wife, usually at his house, she also paid premiums at the cigar store on 7th street, that all premiums were paid at his house, 631 Q Street, N. W., or the six hundred block of Q Street for five or six years before the death of Mr. Wood. Witness knew that Mr. Wood was not in good health but he came to his house. Thereafter witness stated that he was not clear—he could not say whether Mr. Wood was at his house at any period with reference to the transfer of this policy, but knows that Mrs. Wood was there. Witness remembers telling Mrs. Wood that it would be necessary for her to transfer from the fourth class to the fifth class, and pay \$13.90 a month. He remembers telling Mr. Wood and Mrs. Wood both that. Witness is positive that Mr. Wood came to him and talked to him about transferring the policy, but does not know whether it was
55 at the cigar store or at his home. He does not recall sending a postal card but remembers that Mrs. Wood came to see him—she came several times. The first time she came with reference to the exchange of policies, she wanted to know whether she would have to transfer.

Witness informed her that it was up to them whether they transferred or not.

Witness states that he told them they did not have to transfer, that there were none of the members compelled to transfer. They could remain in the fourth class. Witness explained by saying that they had to either go in the fifth class and pay \$13.90 at Mr. Wood's age, or remain in the fourth class and surrender up their policy and take a policy in lieu thereof for such an amount as the payments

then being made would pay for, but not for two thousand dollars. They could continue in the fourth class and pay the fifth class rate. Witness does not know the purpose in having them give up the policy if they could continue in the fourth class and pay the fifth class rate. Upon being asked why he told Mrs. Wood this if he did not know why, he answered that he told her that in accordance with instructions from the home office, and these instructions were in the possession of witness and he showed them to all of them, including Mrs. Wood.

Upon being asked why he did not deliver the several letters and notes that he received from the home office he stated that he had no recollection of any such thing, but suggests that he may have told her that he could not let them go out of his hands, but he does not think that he refused to show them to her.

Q. Did you not tell her that if she took fifth class,—that is, surrendered the old policy and took a new policy and paid it for three years, that at the expiration of the three years the company would carry it for her for one year or 360 days, at which time she could then continue her payments again? A. I explained the different plans at the time of the transfer.

Q. Well, let us get it straight now. I understood you to say that you did not tell her that if she took this fifth class, and paid \$13.90 for three years, that then the company would carry it for a year for her? A. I told her that Mr. Wood would be entitled to extended insurance.

Q. Did you not tell her that if she paid up for three years that then the company would carry it for a year, at the end of which time she could then continue her payments of \$13.90? A. No, sir.

Witness never told her anything of that sort. Witness and Mr. Wood both understood that after she stopped paying in January, 1912, that there were to be no other payments made by her.

Witness was then shown the postal card dated May 25th, 1913, which witness identifies as his own handwriting and testifies that he wrote it and signed it and sent it to Mr. Wood.

Q. Now will you tell this jury why, if you explained to her that she would have extended insurance for a year, after which time there were to be no payments made, did you write her this postal card? Take it and examine it now and tell the jury. A. Mr. Wood and myself both understood that he could resume payments at any time within the year. It was within the year at the time I wrote this postal card; but, after the expiration of one year, he could not resume payments.

By a juror:

Q. One year from when? A. One year from the time the extended insurance commenced. He could resume payments within one year from that date.

That was Mr. Wood's understanding of it and that was the witness' understanding of it. When witness' attention was called to

what he said on the postal card which read, "That your insurance will expire in December, 1913," he answered, "Well, I may have gotten a little mixed in the dates."

When witness' attention was called to that part of the letter which reads, "That you can resume payments at any time," he answered "Within the year, I should have added." He says it was not on the postal card, but it was understood by Mr. Wood and himself.

57 Witness simply omitted to put on there "Within one year."

Witness' attention was again called to the postal card and to the fact that the new policy is dated Feb. 1, 1909, that the three years' payments would carry it to Feb. 1, 1912, that one year's extended insurance would carry it to Feb. 1, 1913, and witness was then asked to tell the jury why on May 25th, 1913 he wrote this postal card stating that payments might be resumed in December. Witness answered, "I wrote that on the assumption that upon the payment of his back payments that he could resume payments," but he did not say so in the postal, and that is another thing, that he intended to say that he did not say. The witness cannot tell the jury why he omitted these two important things from the postal card.

Witness has nothing in his mind to suggest why he omitted them, and has no explanation to make of this statement in that postal card.

58 Thereupon witness was shown "plaintiff's exhibit No. 3" and was asked to read it to the jury, and to point out to them anything on that paper about "extended Insurance." The witness stated, "There is nothing there." He was then asked if he intended to put anything there and he replied that he did not know whether he did or not.

Q. Then why didn't you put it on there, if you were giving this paper to them as their guidance before making the exchange? A. I don't know.

Q. Have you any explanation to make of this? A. I have none.

Q. Have you any recollection about it? A. Yes, I wrote it.

Q. Why then didn't you put on there what you intended to put on? A. I don't know.

Q. Why didn't you put on there that the contract—— A. I put on there the information that he called for.

Q. Did you give this to him? A. I think I gave it to one of the ladies.

Q. Is it not a fact that it was when Mrs. Wood went to your house—— A. Very likely it was.

Q. —for the purpose of ascertaining what was required of her? A. Very likely it was.

Q. And what the conditions were with reference to the exchange of policies, that you wrote this? A. No, not in reference to exchange of policies.

Q. Then what was this written for? A. That was after he had his fifth class policy and it was in reference to extended insurance.

Q. If it was in reference to extended insurance, why didn't you put it on there? You just say that he asked you about extended insurance. Why didn't you put it on there? A. It was understood

by myself and the person that called for that that it was in regard to extended insurance.

59 Q. What did you write this paper for? A. For the information of the person who called for it.

Q. Who called for it? A. Mrs. Wood.

Q. Then it was for her information and you say it was for her information about extended insurance. Why didn't you put on there something about extended insurance? A. I told her that verbally, and she understood it.

Q. What did you tell her verbally? A. I cannot recall all that I told her. I told her a great deal about extended insurance.

Q. What did you tell her about extended insurance? A. That is the substance of it on that paper.

Q. There is nothing on this paper about extended insurance, is there? A. The words, "extended insurance" do not appear there, but it all applied to extended insurance.

* * * * *

Q. You do not recall anything that was said, I understood you to say? A. No.

Q. Can you suggest anything that would refresh your memory, and I will endeavor to do it? A. This is in relation to extended insurance entirely. When Mrs. Wood called to see me and informed me that they were unable to carry the policy and they desired extended insurance, then Mr. Wood came to see me himself, and said that that was agreeable to him, and Mrs. Wood said for me to do it, whatever I thought was best.

Q. You remember that distinctly? A. Yes.

Q. Yet you cannot tell us a single word of the conversation that was had at the time this paper was given? A. I am telling you now.

60 Q. Oh, then your memory is refreshed? A. (no response)

Q. Is it not true sir that this was given to her when she called to see you with reference to getting information before the policy was exchanged? A. I think not.

Q. Are you positive about that? A. I am.

Q. What is there now in your mind that fixes it positively in your mind that this was after the exchange, rather than before? A. Because there was nothing relating to extended insurance in the fourth class.

Q. No. You misunderstood me. I will ask you again. Is it not true that this paper was given to Mrs. Wood by you when Mrs. Wood came to talk with you in response to a notice from you that you desired to exchange the form of her insurance? A. In what manner?

Q. When the company—— A. Are you speaking of changing from fourth to fifth class?

Q. Yes. A. That was not given to him before the exchange from the fourth to the fifth class. I did not give that to her.

Q. You did not? A. I did not give it to her before that, no sir.

Q. You gave it to her after that? A. Afterwards.

Q. Now how long after that? A. Oh, it might have been five years afterward.

Q. It might have been. Now, I want your recollection of when it was? A. He took out his policy in the fifth class I believe in 1909 or 1908, and this I think was along about in December, 1913 or 1912. It was probably four or five years.

Q. You say "probably". You have no recollection about when it was given have you? A. That paper?

61 Q. Yes. A. It was sometime prior to January, 1913, 1912—

Q. What I want to get at— A. Well, a month or so. Say December, 1911.

Q. What I want to get at, for the benefit of the jury, is this, if you have any distinct recollection of the circumstances of giving the paper, and when it was? A. Well, December 1911.

Q. Now, what is there that impresses your mind with the fact that it was in December, 1911 that you gave that paper? A. Because I know shortly after Mr.—

Q. Let me see if I can refresh your recollection in another direction. That is all I am trying to do. A. All right.

Q. Do you remember of Mrs. Wood's daughter coming to see you shortly after the mother came? A. Yes.

Q. You remember the mother coming before the policy was exchanged? A. Yes, sir.

Q. And then you remember a few days afterwards, the daughter came? A. No. You confuse me.

Q. I do not wish to confuse you. A. You confuse me between the policies exchanged and the extended insurance. That was two different periods. The transfer from the fourth to the fifth class was one period, and the extended insurance was at another period, three or four years afterwards.

Witness remembers that Mrs. Wood came to him and said, "My husband is not able to work; *his* is an invalid and I have to get my daughter to help me out."

Witness remembers her daughter coming back, but whether it was in regard to the transfer from the fourth to the fifth class, or whether it was the period afterwards in regard to the extended insurance, he does not remember.

62 Q. Do you remember the daughter came in and showed you the paper (plaintiff's exhibit No. 3) and said, "I want to know whether or not mother fully understands this?" A. Not before the transfer, I don't think.

Q. Do you deny now that the daughter did not come there? A. No.

Witness remembers going to Mr. Wood's house in August 1913.

Q. Do you remember making a demand there or rather saying to them that you had done all that you could with the home office, and the only thing you could do for them would be if they would

pay \$244.00 with 5% interest in cash, that the policy would take up the policy again? A. I remember it.

Witness remembers that it was on a Saturday afternoon.

Q. And you saw Mr. Wood in bed and talked with him in bed, with his wife sitting there in the room? A. No, I did not talk to him with Mr. Wood in bed, I talked downstairs to Mr. Wood and to Mrs. Wood.

Q. Was Mr. Wood downstairs? A. Yes.

Q. And not in bed? A. I do not remember him being in bed at all.

Q. Have you any recollection as to whether he was in bed or not?

A. I do not think he was.

63 Q. Did not Mrs. Wood say to you in the presence of Mr. Wood, "Now Mr. Kline, you see the predicament you have gotten us in". Do you remember her saying that to you? A. I do not remember those exact words.

Q. That was the substance of it? A. I presume so.

Q. And didn't you say "Mrs. Wood, I am extremely sorry", or "I am very sorry indeed. I did not understand this myself?" A. Not exactly in those words.

Q. That was the substance of it, wasn't it? A. I gave her to understand that Mr. Wood got what he wanted.

Q. What did you say to her, now? If you say it was not in those exact words, just tell us what you said back to Mrs. Wood. A. I told her that if I misunderstood her I would see what could be done.

Q. And if he would sign a paper and let you have it, that you would take it up with the home office and try to get them reinstated? A. Yes; that is right.

Q. And to bring it to your office? A. Bring it to me.

Q. And that is what they brought to you after that, isn't it? (handing paper to witness). A. That is the paper.

(The paper being defendant's Exhibit No. 1.)

Q. And that was after they told you that they could not pay the the \$244, that they did not have it? A. Yes, after the conversation.

Q. And this was given to you with the understanding that you would take it up and try to get something done for them with the company? A. Yes.

Redirect examination:

Witness was asked as to what he referred to when he spoke of misunderstanding and he answered that when he spoke to Mrs. Wood about whether he had misunderstood her it was in regard to a kind of feature that Mr. Wood wanted on the fifth class
64 certificate, the plan whether it was extended insurance or one of the other features pertaining to the fifth class certificate, and by features witness means certain options which they had.

Thereupon WALTER C. POWERS testified for the defendant, testifying in substance thus:

Lives in Indianapolis, Indiana, is the Central Secretary of the Supreme Lodge, Knights of Pythias, Insurance Department, has held the position since November, 1910, had charge of several important departments of the office from June, 1903 down to that date. Was in charge of the statistical work of the office, the death claim department, and the actuarial work of the office from and after the institution of the fifth class on January 1, 1907. Had ten years former experience in insurance prior to entering the office of the knights of Pythias.

Witness has charge and custody of all the records of the head office of the Supreme Lodge of the Knights of Pythias Insurance Department.

And thereupon the following occurred:

By Mr. Littlepage:

Q. Mr. Powers, I hand you here a book——

Mr. Gardiner (interposing): I object to that, if Your Honor please. Mr. Littlepage has shown it to me. It is a certified copy, he says of the laws, rules and regulations of the order, which have not anything to do with the issue here.

Mr. Littlepage: I will show Your Honor why it has. I first want it identified, and ask Mr. Powers to state what it is.

A. It is a full, true, complete and correct copy of the laws governing the order of Knights of Pythias and its insurance department.

Q. I will ask you to open the first leaf of that book and identify whatever appears on that page.

Mr. Gardiner: That is objected to. In the interest of time, I wish to state that I will object to anything in reference to what the home office did or what they undertook to do. Under Your Honor's ruling, it is already out, I submit.

The Court: I cannot tell, Mr. Gardiner, what is the purpose of this.

Mr. Gardiner: I cannot, either, but there is nothing shown now, and I object to it unless there is something shown.

The Court: They are preliminary questions, which we all permit answers to, even though their relevancy does not at once appear.

Mr. Littlepage: To shorten the time, which I am very anxious to do also, Mr. Gardiner raised an objection a moment ago, and properly so, I think, to a leaflet here. We are avoiding any objection by attempting to identify and offer in evidence a certified copy, certified by the proper authorities, and under the seal of the order, and then as to what it says and what it speaks in this case and its relevancy is a matter for determination later; but that is the only way we have, if those questions are made, that is the only conceivable way we have of getting them properly before the court and the jury.

66 Mr. Gardiner: Your Honor ruled that they were not important this morning.

The Court: I do not know. I am still in the dark as to the purpose. What is it you want to show?

Mr. Littlepage: I can tell Your Honor in just a word.

The Court: Well, do so.

Mr. Littlepage: The purpose is this. There has been injected into this case the proposition that Mr. Wood gave up something of value and got something of lesser value. Now, as to whether he gave up something of value depends upon his standing, the future action of the order, and assessments, and the financial situation of the policyholders who held the old policies, and whether or not he would be bound by that action, and as to that matter it is a matter of the law and the authority of the order itself he was a member of, and for the purpose of qualifying this witness to show what Mr. Wood would have had if he had kept this old policy and what the situation is here, we offer this piece of evidence.

The Court: Do you want to show that what he was giving up was not worth much?

Mr. Littlepage: We might and might not show that. We are going to show that he is bound by the rules of this order.

The Court: As I understand you now, Mr. Littlepage, this insured, Mr. Wood, was a policyholder or certificate holder as a member of this organization in 1909, and there is evidence tending to show that he had been a member and the holder of such a certificate or such a policy for a considerable number of years prior to that time.

Mr. Littlepage: And bound, if Your Honor please, by the rules of the order at that time.

The Court: Granted, the rules of the order that formed, if they did, a part of his contract.

Mr. Gardiner: Which they do not, under the Supreme Court's decisions.

67 The Court: Whether they do or not, what then? What is it you want to show?

Mr. Littlepage: Just this point, if Your Honor pleases. Suppose the Supreme Lodge under the authority of the law made certain adjustments as to rates later of these old policies, the question might arise as to whether or not they had such authority to do that, and if it did that, whether it would bind a man who held that old policy, and that is the purpose of getting those rules and regulations in.

Mr. Gardiner: I cannot see that, Your Honor.

The Court: What is the purpose now, to show that the policy he held might become of very little value if the Knights of Pythias exercised some authority it is claimed it possessed, in making such an assessment?

Mr. Littlepage: Exactly, Your Honor.

The Court: And that, because they had that power and might exercise it, that it was a better thing for this man to get out of that policy, get from under and take a new one? Is that the theory?

Mr. Littlepage: That is the theory, Your Honor.

The Court: Well, I do not believe we can go into that now, Mr.

Littlepage. The theory that seems to be presented by the issues here is that this man had a policy issued by this organization to him. What its value was from the insurance standpoint or an actuarial standpoint, or how much it might decline in value, I do not believe is material, as I view the matter. He had it, he had received it from this association or this organization, and it is said, it is claimed on his behalf here by the plaintiff suing, that he gave it up under the circumstances and took this other.

Mr. Littlepage: But he gave up a policy and got something that was not as good, that he gave up something of value for something of lesser value.

The Court: I do not understand that that is the claim. According to the plaintiff's claim, he got something that was more burdensome than it was represented to them.

68 Mr. Littlepage: That is the point that we have to show by projecting ahead the policy he had. Now, in the case of Mims, which is the leading case, against this very order, which went to the Supreme Court of the United States, the questions arose as to the authority of the organization to make these future adjustments and increases and levies, as to whether or not—

Mr. Gardiner (interposing): In the Mims case, I am familiar with it, they were testing the right to make changes in the assessments.

Mr. Littlepage: Yes.

Mr. Gardiner: That has nothing to do with this case. I have read that case forty times.

The Court: This is the point you did not make clear to me. I said a few moments ago, assuming that the power to make these assessments existed, what has that to do with it?

Mr. Littlepage: Then, if Your Honor please, we show that these assessments were made on the old policies, and made those old policies a more expensive proposition to carry than the new policy which he took. Now, it comes to the measure of damage. It does not make any difference whether Mr. Kline's, as I see it, recollection in this case or Mrs. Wood's recollection is correct or not, so far as the measure of damage is concerned; if as a result of any mistake Mr. Wood got something better than he had, he was not damaged, it is our position. The only way that we can show that at the time he surrendered the old policy he was paying \$4.00 a month—

The Court: The inherent value of the policy I do not think has very much to do with the matter. The issue here is whether or not, by reason of representations that Mr. Kline made, if he did make them to Mr. Wood, to Mr. Wood's representative or representatives, Mr. Wood got on the policy sued upon what he was told he would get. With respect merely to the question whether or not after running for three years there would be this so called rest period—

Mr. Littlepage (interposing): Then as I understand Your Honor's ruling, the policy speaks for itself in that regard, the language of the policy and the language of the contract.

69 The Court: I have decided that there can be no recovery on that policy as a loss. I am submitting to the jury the issue whether or not Mr. Wood did not get the kind of a policy in exchange in this

particular now about which all of this evidence has centered, that if it was so represented to him by Mr. Kline he expected to get the value of it. In case of a loss it does not affect the question of damage, it seems to me. The Supreme Court settles the measure of damage as a return of premium.

Mr. Gardiner: Yes sir.

* * * * *

The Court: I think this question, after reflecting on it—there may be some questions here, and I hoped before we got through that I would be enlightened on the subject. Assuming for the moment—now—of course, not indicating any opinion of my own on the subject—but assuming for the moment that this claim that the plaintiff makes here is treated as established, just for the suggestion that I want to make, it would appear from your testimony that Mr. Wood had the benefit, for whatever it was worth, of this old policy, the policy that he surrendered, for a considerable period of time, for which he paid, as I gathered from the evidence adduced, in the form of assessments, which seemed to increase in amount as the years went on, until they reached a point where, according to the evidence in this case, they were becoming very burdensome upon Mr. Wood or his family, who were paying them, in view of their limited circumstances. Now, if it be true that he did not get the kind of a new policy that she was led to believe he was getting, he lost his old, he surrendered that, and the second one he exchanged and got when he surrendered the first, is also, according to the contention of the defendant, of no value. If he did not get it, then the question arises, what is the measure of damages? Is the company entitled to deduct from any premiums paid by him the reasonable amount of premiums, whatever might be the amount, the protection for the period he was actually protected? Mr. 70 Gardiner, as I understand it, proceeds upon the theory or contention that he is entitled to recover every dollar of premium he has ever paid in.

Mr. Gardiner: With interest from the date of payment, and I will back that up with all the authorities, if you want me to. But where the company has failed, our court has said too, and all the courts, then they shall be treated as though they were settling up a policy under a failed company, just as the Supreme Court says there. They have referred to that case repeatedly.

The Court: That matter is perhaps not now before us. It may come in the shape of instructions, but I suppose you have a right to show, if you can, what the value was at the time.

Mr. Littlepage: That is what we were coming to, Your Honor.

The Court: The evidence will be received, subject of course to the final determination of the Court as to the measure of damage, now, and if this gentlemen is competent to testify as to that, let us get right to it now.

Mr. Gardiner: That will be subject to my objection and the motion to strike out, too?

The Court: Oh yes, certainly. I am not deciding the question now of the measure of damages.

Mr. Gardiner: Oh yes, I understand that.

By Mr. Littlepage:

Q. Mr. Powers, please refer again now to the first page. As I understand, I am proceeding subject, of course——

The Court (interposing): Yes, get him right down to the particular matter.

Q. What do you observe on the first page inside of that book, and what is that? A. It is a certificate signed by the keeper of the original records of the Supreme Lodge Knights of Pythias.

Q. What seal is that? A. The seal of the Supreme Lodge of Knights of Pythias.

Mr. Gardiner: You can save all of those questions—I am not making any technical objection, but get right down to the meat of the thing.

71 Mr. Littlepage: We offer this now in evidence, Your Honor, this certified copy of the supreme constitution and statutes of the Knights of Pythias, adopted by the Supreme Lodge.

Mr. Gardiner: For what purpose—state it in the record.

Mr. Littlepage: Yes, for the purpose of showing later the effect of those rules and regulations upon any member who went in.

The foregoing colloquy was in reference to Defendant's Exhibit No. 2, pertinent excerpts from which are hereto attached.

72 Plaintiff's counsel submitted to the opposing counsel on the first day of the trial a summary of calculation made by him from the cards, which had been introduced as evidence by him, showing an amount being his calculation therefrom as the amount paid as premiums or assessments with interest, in order to lessen the burden of the jury.

Thereupon defendant's counsel stated that he desired to ascertain of plaintiff's counsel whether he offered that instead of the cards and plaintiff's counsel stated that he offered the cards and offered this as a computation from the cards.

Defendant's counsel then stated, "We haven't any desire to burden the jury and if the statement Mr. Gardiner has made up there is one to be given to the jury, we call attention or reserve the right later to make some correction."

Mr. Gardiner: "I stated it in round figures and they can take their experts and correct that."

Mr. Littlepage: "We haven't any objections to a correct calculation for the purpose for which he offers it but the thing is on the cards."

Witness Powell states that the cost under the fifth class certificates from the date of its issuance in Feb. 1909, to the date of the expiration of the last monthly payment, which was for the month of Feb.,

1912, the total payments amounted to \$458.70. The same protection under the fourth class certificate would have cost him \$685.50.

Assuming the payments were made under the fifth class certificate from the date of its issuance down to the month in which Wood died, the total payments would have amounted to \$889.60, and the certificate at the date of Wood's death would have had extended insurance for a further period of 3 years and 74 days or it would have had a paid up value of \$268.00. The cost of the fourth class certificate from the date of the issue of the fifth class certificate (Feb. 1909), down to and including the month in which Wood died (Oct. 1914), would have amounted to \$825.00—or \$64.60 less than the cost of the fifth class certificate; without any of the advantages of paid-up insurance or extended insurance of the new certificate.

Witness states that the matter of transfer from one certificate to another was purely optional with each member at all times. The increased assessment under the old policy was in accordance with the authorities of the Supreme Lodge.

Cross-examination:

Witness states that had the old policy continued in force until the death of Mr. Wood, the company would have paid him at death two thousand dollars, the amount specified in said policy and that assuming that through a misunderstanding he gave that up and lost all of his insurance he lost the two thousand dollar new certificate less the amount of premiums he would have paid the company from that time to his death, assuming that he died when he did.

The home office nor the witness had no knowledge of the fact that Mr. Wood was sick and an invalid. The home office did business on the brotherly love style, up to the inception of the fifth class, when they found it would not pay the outstanding certificates. Like other fraternal societies, they tried to furnish insurance at less than cost. Witness states that he knew nothing whatever about the misunderstanding between the company's secretary and the Wood family, and the first they knew of it was when this suit was brought.

The application for transfer from the fourth to fifth class came in; certificate was issued and sent to Kline for delivery.

The correspondence was between Mr. Kline and Mr. Wood and it did not come to the home office. It was not in the office records and witness had not seen it. Witness states that after hearing Mr. Kline's testimony and understanding it, and still with this certificate in force, as a fraternal association he still claims there is nothing due whatever.

The witness further testified after examining the statement containing the calculations made by Mr. Gardiner of the amount of premiums paid and the calculation of interest thereon that the actual payments made by Wood on the two policies without considering the interest amounted to \$1,321.30.

The premiums collected were used to pay the maturing death claims, and a part of the premiums paid, of course, the expense loading which was used to cover the management expense of the society.

And thereafter both plaintiff and defendant announced they had closed their case, and the Court proceeded to consider the prayers presented and to hear argument thereon.

Plaintiff's prayer No. 1, was granted over the objection and exception of the defendant, duly noted, in words and figures as follows:

Law. No. 59119.

CATHERINE WOOD, Plaintiff,

vs.

SUPREME LODGE, KNIGHTS OF PYTHIAS, Defendant.

1.

The Court instructs the jury that if you find from the evidence that William H. Wood had a policy of insurance in defendant company under which plaintiff was beneficiary, and upon certain representations and statements of the local secretary of the defendant company, gave up the policy which he had in said company for \$2,000 and accepted another policy for a like amount, and you further find from the evidence that the representations or statements made by the said agent were made under a misunderstanding as to what the new contract with the insured was, then you are instructed that when the defendant company had notice that the insured gave up his policy upon the said representations of the agent, through a misunderstanding of what the new policy contained, it was their duty then and there to reinstate and deliver back to the insured the original policy of insurance or to pay the insured the amount of premiums paid on the two policies up to that date, with interest thereon at six per cent per annum, and if you find that they did not offer to do either, but insisted upon the forfeiture under the terms of the policy, the plaintiff is entitled to recover in this case the total amount of premiums paid on both policies, with interest on each payment from the date of said payments to date of this judgment, amounting to \$2,362.34.

Granted.

Ex.

F. L. S.

Defendant's prayers Nos. 1, 2, 3, 4, 5, 6, 7 and 8, in words and figures as follows were denied by the Court and exceptions duly noted in each and every case. In connection with defendant's prayer No. 4, the following occurred:

Mr. Gardiner: The fourth prayer is misleading entirely. If you will tell the jury, as you indicated you would that is the law, I think.

The Court: Yes; in its present form it is not clear. That will be denied in its present form.

Mr. Taliaferro: We would like to know the basis of counsel's objection to the form of that prayer.

Mr. Gardiner: I stated it. In the first place, it is too general. It says "either express or implied contracts." In the second place, it does not state the case as the law is, as I understand.

The Court: The principal difficulty being in not thoroughly drafting the principles which you intend to invoke. What contracts are you talking about—"express or implied"—what contracts?

Mr. Taliaferro: If you will just hear me a moment. I think that this prayer is very material and is a proper prayer. This is a contract action. It certainly is not an action of tort. It is an action on contract of some sort. Now, if those two policies under discussion are not the contracts, then the plaintiff must show some other
76 contract, of some kind or character, and must further show that it was performed, or the performance thereof was tendered by Mr. Wood, and that there was a breach by the defendants before there can be any recovery. There must be some contract shown.

Now, our further prayers bear on those two policies. Of course, our position is that the company carried out the terms of the first certificate or policy fully, and that that ended that; that the company performed all of the contents of the second policy, and that ended that policy. Now, we know of no other contract between these parties; but we say that it is basic and fundamental in this action, that they must establish some sort of a contract, and a breach of that contract by this defendant, before there can be any recovery. That is what we have tried to state, and we think we have stated it in that prayer.

The Court: I have held that there can be no recovery on the policy of insurance in this case.

Mr. Taliaferro: There must be some basis of recovery.

The Court: But it is not a recovery on the policy.

Mr. Taliaferro: But it is damage for the breach of some sort of a contract.

The Court: It is to recover premiums paid.

Mr. Taliaferro: The plaintiff's theory is that they are entitled to recover premiums, but that is simply the measure of damages. Of course, we do not subscribe to that.

The Court: Of course not. You are not admitting that they should recover anything.

Mr. Taliaferro: No, but that means that there has been a breach of some sort of a contract with this defendant. What contract is it? It is up to them to prove the contract that they stood ready to perform and tendered performance, and that we breached it. That is their burden. Either this contract, or some one of these policies, or some contract which the law would imply requiring the payment of money, which was not done, or upon which there was some return

77 to be made. What is that contract? They must bear that burden and show it. There must be some contract as a basis for this recovery, and a breach on the part of the defendants shown.

The Court: Well, what about it, Mr. Gardner?

Mr. Gardner: Of course Your Honor, I assume, will tell the jury that unless they believe that the plaintiff was led to believe as she has testified to, that there could be no recovery, but to say to this jury in the form that these prayers are drawn, would confuse the jury, and would not state to the jury, if Your Honor please, the questions which you would put. Now, you have already said that there was no contract between them, and you found that they were mistaken, that they made a mutual mistake. At the suggestion of my friends, you struck out the words "misrepresentation and deceit" in the prayer and left it "mutual mistake;" therefore, the question is, did the plaintiff understand, as she testifies, that she was to get this. Your Honor will tell the jury that, and will cover the law in the proper form, but to say it in the form in which these prayers are put would be misleading.

The Court: Well, I do not think I can give it in this form. I shall undertake to charge the jury as I understand it, that there was a contract in existence between the parties, the old policy, and that the controversy depends upon the circumstances under which that policy was surrendered by the insured to the defendant company, and another one issued; not the kind, as the plaintiff says, that was to have been received by another and different kind. That they supposed they got the contract they were to get until they are met with the statement of the company that the second policy had lapsed.

Mr. Taliaferro: Your Honor will allow us an exception?

The Court: Oh, yes.

78

Defendant's Prayer No. 1.

The jury is instructed upon the whole case, to return a verdict for the defendant.

Denied.

Ex.

F. L. S.

Defendant's Prayer No. 2.

The jury is instructed as a matter of law that when William H. Wood, deceased, had issued to him, received and accepted Certificate of Membership No. 1658, dated April 16th, 1885, in the Fourth Class, Endowment Rank of the order of Knights of Pythias, he then became and thereafter was, so long as he retained such certificate and the same remained in force, obligated to fully comply with all the law governing said rank in force at the time the certificate was issued or thereafter enacted, by the Supreme Lodge of Knights of Pythias.

Denied.

Ex.

F. L. S.

Defendant's Prayer No. 3.

The Jury is instructed as a matter of law that when William H. Wood deceased, had issued to him, received and accepted Fifth Class, Certificate of Membership, Plan A, No. 264,581, dated the first day of February 1909, he then became and thereafter was, so long as he retained such certificate and the same remained in force, subject to and fully bound by the charter, all the laws, rules and regulations of the society (the Supreme Lodge Knights of Pythias) governing the Insurance Department, in force at the date same was issued, and as the same were thereafter changed, altered, added to, amended or repealed.

Denied.

Ex.

F. L. S.

79

Defendant's Prayer No. 4.

The jury is instructed that before they can return a verdict for the plaintiff, they must have reached the conclusion that there was a contract, either express or implied between the defendant and plaintiff's deceased husband; that the intestate fully performed or tendered performance of their part of the contract and that the defendant violated or breached the contract.

Denied.

Ex.

F. L. S.

Defendant's Prayer No. 5.

The jury is instructed that if William H. Wood surrendered one Knights of Pythias membership certificate for another one, and the second one was for a form of insurance as economical and broad as the first and was in *face* as good as the first; that, even tho he may not have fully understood the terms of the second certificate, he was not damaged.

Denied.

Ex.

F. L. S.

Defendant's Prayer No. 6.

If the jury should find for the plaintiff, then they are instructed that the measure of damages is the value of the certificate of membership at the time when the defendant refused to accept further monthly payments of \$13.90 thereunder, namely, in February, 1913, together with interest thereon, less the value of any extended insurance thereafter to which the member was entitled.

Denied.

Ex.

F. L. S.

80

Defendant's Prayer No. 7.

If the jury find that the defendant fully performed all of its obligations under the 4th Class certificate, then they are instructed that no recovery can be had thereunder.

Denied.

Ex.

F. L. S.

Defendant's Prayer No. 8.

If the jury find that the defendant fully performed all of its obligations under the 5th Class certificate issued to William H. Wood, then they are instructed that no recovery can be had thereunder.

Denied.

Ex.

F. L. S.

And thereupon the Court instructed the jury as follows:

The COURT (Mr. Justice Siddons):

Gentlemen of the jury, the declaration filed by the plaintiff here contains two counts. For reasons of law, the Court instructs you that, whatever your verdict may be under the second count
81 of this declaration, your verdict must be for the defendant under the first count of the declaration. The Clerk will take your verdict in favor of the defendant under the first count of the declaration, at the proper time.

Now, what your verdict will be under the second count, of course, depends upon your determination of the facts,—the evidence that has been submitted to you.

The case is, in some respects, rather an unusual one, and presented some little difficulties to the legal mind, whether that is so to the lay mind or not.

If I understand the claim that the plaintiff makes here against the defendant company, it is this: That decedent was a member of this fraternal association, the Knights of Pythias, a good many years before circumstances arose which ultimately gave occasion for this action, and he had become and was a holder of one of their beneficiary certificates, or policies of insurance—I will call it a policy of insurance and you will know what I refer to; that under the old policy the premium payments apparently took the form of assessments, and that those assessments increased from year to year, until finally when the year 1909 had arrived they were beginning to prove very burdensome, if I understand the testimony that has been introduced here on behalf of the plaintiff. You will recall the evidence on that aspect of the matter.

However, the matter arose, a proposition was finally made that if the insured, Mr. Wood, the dead husband of the plaintiff suing here, would surrender his old policy of insurance, sometimes referred to

in the papers as the fourth class insurance certificate, and take out a fifth class policy, that that would probably relieve the situation in view of the threatened danger of steady increase in the assessments to be paid under the old policy.

Now, the plaintiff says that when that proposal was submitted, that they were informed by the agent, Mr. Kline, whom you have seen and heard here, that if Mr. Wood would take out a new policy

82 proposed, the policy upon which this suit was brought, that if Mr. Wood could pay the premiums, the monthly sum stipulated to be paid for a period of three years, having done that, there would be what one or more of the witnesses called a recess period of a year or 360 days—said, I think, by Mrs. Wood and perhaps her daughter,—you have heard the testimony—at the expiration of which recess period, then the insured could resume the payments of the stipulated amounts provided for—you will recall what that was—the monthly sum to be paid—and that when Mr. Wood surrendered the old policy and received from the company the new policy, the policy on which under the first count of this declaration the action was brought, that it was supposed and believed by them that they were getting insurance of the character that they say Kline represented to them was being issued. That is, that they understood they could, if they continued their payments for three years, then take a recess from these payments for one year, or 360 days, and that they could then resume; but, instead of such a policy as that, says the plaintiff, they got a policy which provided that if they continued these payments for three years, and then stopped making payments, that there would be what is called in insurance parlance, an extended period of insurance for a specific or stipulated time, at the expiration of which time, unless the insured had been reinstated, the policy lapsed. That is the kind of a policy that the insured received in return for the policy surrendered up, and the making, of course, of the stipulated payments; and the plaintiff says that is not the policy that the agent of the company said that they would receive, and that they believed they did receive—I say “they;” I mean the insured, acting, it would appear, as you have heard the evidence, mainly through the wife, on that point, the beneficiary of the policy, he being a sick man—and that they did not get, as it turned out, the kind of a policy that they supposed they were getting, which they say Mr. Kline represented to them as the kind of a policy that the company would issue to them; that the policy they received was not the kind of a policy that they claim it was represented that they should receive.

83 Now, that is the plaintiff's side of the case, the plaintiff's claim. The defendant company says that that is not so. The defendant company says that there was a proposition made for the surrender of the old policy, which, in effect, was becoming increasingly burdensome to the policy holder, and that there was danger that when the loss should become payable by the death of the insured, under the financial system that prevailed with such assessment policies, there might not be available enough money from the assessments then to pay them, or enough funds properly credited to such

policy to pay the amount of the policy in full; but to take out a new policy, based upon—I say this in no offensive way to the defendant company—but, based on a sounder policy than the old policy, providing for a mortuary reserve, protecting the policy and making certain provision for the payment of losses thereunder, upon the death of the insured; and that the insured, the plaintiff's dead husband, got precisely the kind of a policy that it was agreed that he should get, and that he understood that he got; that after three years of payments under the new policy of the amount stipulated, he stopped, and the extended period provided—the period of extended insurance provided for in the policy,—ran its course, and the policy lapsed by its own terms, and any rights that the insured had in it ceased; any rights of the beneficiary upon the death of the insured no longer existed. That is the contention of the defendant here.

The Court has ruled that, as you may find the facts to be, if you shall find in favor of the plaintiff's contention here, then the measure of damages, the amount that you would be warranted in finding due the plaintiff from the defendant company, is the amount of premiums paid with interest according to the rate prescribed in the prayer granted at the instance of the plaintiff, which plaintiff's counsel has read to you, and which I do not think it is necessary to read to you again.

Now, that is the petition made by counsel for the plaintiff. It is not a hard and fast sum; but if it is accurate, and you find for the plaintiff, that is the sum for which you would be warranted in
84 returning a verdict in her favor; that is, in the event you shall find the facts to be as the plaintiff and her witnesses have undertaken to present them to you.

If, however, you find that the second policy, that is, the policy upon which this suit was brought under the second declaration, was precisely the policy that the company intended to issue to Mr. Wood, and that Mr. Wood accepted and understood he was to get and did get, and he continued his payments for three years and then stopped and took advantage of the extended insurance period provided in the policy, when that had lapsed, that ended his rights and his interest in the policy. If you shall find those to be the facts, your verdict must be for the defendant company.

Now, I do not think I can say anything more that would aid you in this matter. Whether you think you can improve on Mr. Gardiner's figures or this calculation of his here—you may do so, of course, if you should find for the plaintiff.

A Juror: Could I ask a question?

The Court: Yes, sir.

The Juror: If we should find for the plaintiff, we must find for the sum given in that prayer?

The Court: The claim that is made under the second count in the declaration, you would be warranted, if you should find for the plaintiff, in awarding to the plaintiff the sum of the premiums paid, the total premiums paid, plus the interest. The claim and the rate of interest—I do not know that the rate of interest is stated here. Is it?

Mr. Gardiner: Yes, sir; I think the law requires it to be six per cent.

The Court: Six per cent upon these premiums so paid, upon the proper principle of computing interest under those circumstances.

A Juror: Your Honor, if we find for the plaintiff, is that six per cent interest compounded or simple interest?

85 The Court: Oh, I do not understand it is compounded.

Mr. Gardiner: No; it is just the interest on each payment from the date it was paid until your verdict; each payment.

The Court: The payment of each sum on the premium, as paid; these, as I understand from the evidence, are paid monthly.

And thereupon, the case was given to the jury and verdict was rendered for the plaintiff in the sum of \$2,362.34, and after a motion for a new trial made by the defendant at a time prescribed by the rules of the Court had been presented and considered, the Court advised Counsel for both parties that the motion would be allowed unless the plaintiff elected to file a remittitur. And thereupon the plaintiff by counsel filed a formal remittitur in the sum of \$840.44 from the amount of the verdict of \$2,362.34 rendered by the jury; the Court then overruling the defendant's motion for a new trial and judgment for the plaintiff was duly entered for the sum of \$1,521.90, with interest thereon from October 30, 1914. To which action—the calculation forming the basis of remittitur; the filing of the remittitur; the acceptance of same by the Court and the overruling of defendant's motion for a new trial; the defendant duly and severally noted exception.

86

Copy of

PLAINTIFF'S EXHIBIT No. 2.

No. 1658.

Fourth Class.

Certificate of Membership.

\$2,000.

Endowment Rank of the Order of Knights of Pythias.

This Certifies, That Brother William H. H. Wood received the Endowment Rank of the Order of Knights of Pythias in Section No. 6 on April 16, 1885, and is a member in good standing in said Rank. And in consideration of the representations and declarations made in his Application, bearing date of April 4, 1885, which Application is made a part of this contract, and the payment of the prescribed Admission Fee, and in consideration of the payment hereafter to said Endowment Rank of all monthly payments as required, and the full compliance with all the laws governing this Rank, now in force, or that may hereafter be enacted, and shall be in good standing under said laws, the sum of two thousand dollars will be paid by the Supreme Lodge Knights of Pythias of the World, to Cathrine Wood, wife, as directed by said Brother in his Application, or to

such other person or persons as he may subsequently direct, by change of Beneficiary entered upon the record of the Supreme Secretary of the Endowment Rank; upon due notice and proof of death, and good standing in the Rank at the time of death and surrender of this Certificate.

Provided, however, that if at the time of the death of said Brother, one monthly payment to the Endowment Fund by members holding an equal amount of Endowment, shall not be sufficient to pay the amount of Endowment held by said Brother, the benefit to be paid in case of death shall be a sum equal to one payment to the Endowment Fund by each member holding an equal amount of Endowment. And it is understood and agreed that any violation of the within-mentioned conditions, or the requirements of the laws in force governing this Rank, shall render this Certificate and all claims null and void and that the said Supreme Lodge shall not be liable for the above sum, or any part thereof.

In witness whereof, we have hereunto subscribed our names and affixed the seal of the Supreme Lodge Knights of Pythias of the World.

Attest:

JNO. VAN VALKENBURG,
Supreme Chancellor.

R. E. COWAN,
Supreme Keeper of Records and Seal.

87 Issued this 16 day of April, 1885, P. P. xxii, at Washington, District of Columbia, and registered in Book I Folio 34.

JOHN NELSON,
Supreme Secretary.

88

[Endorsed.]

Warrant No. —.

Class \$—.

Certificate No. —.

Account of — — —.

For Additional papers see —.

Voucher No. —.

Received Jan. 2, 1909. Cert. Dept.

— —, 18—.

Received of — —, Supreme Secretary of the Endowment Rank of the Order of Knights of Pythias the sum of — Dollars (\$—) payment in full of this certificate.

Attest:

[SEAL.] — —.

Secretary Section No. —.

Insurance Dept. K. of P. Received Jan. 2, 1909. Mail Clerk.

89

Copy of

PLAINTIFF'S EXHIBIT No. 3.

After 3 years, the company will carry the insurance for 1 year,
360 days.

After 4 years 2 years 185 days.
" 5 " 2 " 340 " &c.

90

Copy of

PLAINTIFF'S EXHIBIT No. 8.

Insurance Department, Knights of Pythias.

Section No. 6.

Washington, D. C., December 31, 1911.

BROTHERS:

The following is a synopsis of the business of this office for the
thirty-fourth year:

Received from monthly payments, fourth class.....	\$654.50
" " " " fifth "	4,695.05
Total received	<u>\$5,349.55</u>
Cash paid to the Board of Control.....	5,349.55
Membership, fourth class.....	11
" fifth class.....	74
Total membership.....	<u>85</u>
Insurance, fourth class.....	\$8,042.00
" fifth class.....	112,500.00
Total insurance.....	<u>\$120,542.00</u>

During the year the Section has suffered a loss of twelve members,
as follows:

Charles W. Barr, \$476, fourth class, forfeited February 21, 1911.

William H. Cardew, \$1,000, fourth class, forfeited January 21,
1911.

John O. Estabrook, \$1,000, fourth class, forfeited January 21,
1911.

William H. Flood, \$3,000, fifth class, died February 12, 1911.

Joseph W. Galliher, \$2,000, fifth class, died May 4, 1911.

Joseph C. B. Gilmore, \$3,000, fourth class, withdrawn January 16, 1911.

Virardo J. Matchett, \$2,000, fourth class, forfeited January 21, 1911.

Donald R. Richardson, \$1,000, fifth class, withdrawn October 17, 1911.

William H. Snyder, \$228, fourth class, certificate surrendered May 8, 1911.

Franklin P. Wilkins, \$1,000, fifth class, forfeited October 21, 1911.

Joseph Williams, \$2,000, fourth class, forfeited January 21, 1911.

James F. Waters, \$1,000, fifth class, forfeited January 21, 1911.

Two members have been admitted, making a net loss of ten members.

Fraternally,

JOHN M. KLINE,
Secretary.

91

DEFENDANT'S EXHIBIT No. 2.

(Excerpts Deemed Pertinent to the Issues Raised on Appeal.)

The Supreme Constitution of the Order of Knights of Pythias.

In Effect Oct. 22, 1906.

P. P. XLIII.

Preamble.

The Supreme Lodge Knights of Pythias, a corporation existing by virtue of the Act of Congress approved June 29, 1894, is the source of all authority in the order of Knights of Pythias, and does hereby ordain and establish this Supreme Constitution.

Article I.

Reserved Powers.

The Supreme Lodge Knights of Pythias hereby reserves to itself all powers which are not herein not delegated.

Article II.

The Supreme Law.

The Supreme constitution and the laws and rituals enacted by the Supreme Lodge in accordance therewith shall be the Supreme law of the order of Knights of Pythias. (P. 7.)

* * * * *

Chapter IV.

Sections of the Insurance Department.

440. Subordinate or local branches of the insurance department shall be termed "sections", into which the membership of the insurance department shall be grouped. Each member of the insurance department, in addition to maintaining his membership in a subordinate lodge, shall maintain membership in a section of the insurance department. (P. 118.)

* * * * *

92

Chapter IV (continued).

452. The secretaries of sections shall forward to the board the monthly payments and assessments collected, immediately after the twentieth day of each and every month. If such payments and assessments are not paid to the board on or before the last day of the same month, the section so failing to pay shall stand suspended from membership in the insurance department and its warrant of authority shall be ipso facto suspended. Notice of such suspension shall be forthwith sent by mail by the general secretary, addressed to their last known postoffice address in the office of the board, to the president, the secretary and to each member of such section; provided, that such notice shall not be a part of the process of suspension; provided, further, that any surviving members of a section, not less than three, whose warrant has been suspended, shall regain all rights it had as a section, and each such member thereof his full rights and privileges held previous to such suspension and forfeiture, if within thirty days from the suspension of warrant, said section shall pay to the board all monthly payments and assessments unpaid and accrued upon said members; provided, that the member who has paid his monthly dues and assessments as required by law shall not be affected by the suspension of this section, and shall be deemed in good standing in the insurance department; and, until his transfer to another section, he shall pay his dues and assessments directly to the board of control. (P. 120.)

* * * * *

461. No officer of a section and no officer of the insurance department shall possess or have the power to waive any of the requirements or laws of the Supreme Lodge, nor shall they by any course of dealing or conduct bind the Supreme Lodge or estop the Supreme Lodge from insisting upon the strict observance and enforcement of all laws. No member of the insurance department shall gain any right by reason of the misconduct, omission or malfeasance of an officer. The right of the Supreme Lodge at all times, as the representatives of the aggregate membership in the insurance de-

93 department, shall be superior to the rights of individual members claiming rights by reason of some course of dealing or conduct of an officer in violation of the laws of the Supreme Lodge. (P. 122.)

* * * * *

Chapter V.

Section Names, Meetings, Quorum, Supplies, etc.

468. The secretary shall receive all applications for membership, made out in proper form, and forward them, accompanied by the membership fee and first monthly payment, to the board. When notified of the rejection of an applicant, the secretary shall promptly return all moneys paid.

(a) The secretary shall keep a faithful record of the business of the section transacted in the meetings or by the authorized officers during the recess; also a financial account with each member of the section. He shall keep a correct record of the postoffice address and occupation of each member and record changes thereof, of which he has notice. He shall notify the board immediately of any change of address or of occupation of members. He shall use the books, blanks and forms furnished by the board, and perform all other duties required of him by the laws of the insurance department or by the rules of the board.

(b) Before entering on the discharge of his duties, the *section* shall require the secretary, and he is hereby required to make and execute a bond to the Supreme Lodge Knights of Pythias, to secure the due and prompt payment to said board of all membership fees, monthly payments and assessments collected by him as secretary from the members of said section, and to turn over to his successor or to the board, upon demand, the records and property of his office, and for the faithful performance of all duties of his office, the penalty of which bond shall not be less than the maximum amount of three monthly payments collected from all the members of said section.

94 (c) No person shall be agent of the Supreme Lodge for the collection of monthly payments or assessments, or authorized to receive any money on account thereof, until he shall have executed and delivered a bond as required by this section, and the same shall have been approved and accepted by the board. (P. 123.)

* * * * *

Chapter VII.

501. From and after January 1, A. D. 1909, all members of the fourth class who may desire to transfer their membership to the fifth class shall have the right to do so, upon surrendering their benefit certificates in the fourth class and being rated at their at-

tained ages at date of such transfer, upon complying with such conditions, rules and regulations as the board of control may adopt from time to time; and for the purpose of carrying this section into force, the board of control shall have full power and authority to make such rules and regulations with respect to the transfer of members of the fourth class to the fifth class, as it may deem wise and proper. (P. 139.)

* * * * *

536. The laws of the order, as herein enacted, with any and all amendments thereto hereafter enacted by the Supreme Lodge, with all rules and regulations of the board of control, as the same exist or may from time to time be adopted, shall be and constitute part of the contract of insurance between the members of the insurance department and such department, and shall be binding upon such members. (P. 149.)

95 Be it further remembered that the foregoing fully sets forth all facts and the substance of all evidence given at the trial necessary to explain the bearings of the rulings by the trial court upon the issues or questions involved and ruled upon and also the action of the court in connection with defendant's motion for a new trial; that each of the rulings complained of, incident to the actual trial of the case, the attorneys for defendant, before the jury had retired to consider of its verdict, duly and severally made exception and the same was noted upon the minutes of the trial justice; and so that all of the foregoing which would not appear of record otherwise, may be made of record and so to appear on the record of the proceedings in the case, this bill of exceptions has been this 22nd day of April, 1922, signed and sealed to have the same force and effect as if each of said exceptions so noted as above, had been separately and severally set forth.

F. C. SIDDONS,
*Associate Justice, Supreme Court
of the District of Columbia.*

96 [Endorsed:] Law. No. 59119. Katherine Wood, Plaintiff, vs. Supreme Lodge Knights of Pythias, Defendant. Bill of Exceptions. Law offices of Thomas P. Littlepage and Sidney F. Taliaferro, Union Trust Building, Washington, D. C.

Endorsed on cover: District of Columbia Supreme Court. No. 3828. Supreme Lodge Knights of Pythias, a Corporation, appellants, vs. Cathrine Wood. Court of Appeals, District of Columbia. Filed Jun- 5, 1922. Henry W. Hodges, clerk.

(6766)